

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY ) DOCKET NO.  
 ) 00 -0259  
Petition for expedited approval of )  
implementation of a market-based )  
alternative tariff, to become effective )  
on or before May 1, 2000, pursuant )  
to Article IX and Section 16 -112 of )  
the Public Utilities Act. )  
 )  
CENTRAL ILLINOIS PUBLIC SERVICE COMPANY ) DOCKET NO.  
UNION ELECTRIC COMPANY ) 00 -0395  
 )  
Petition for approval of revisions to )  
market value tariff, Rider MV. )  
 )  
ILLINOIS POWER COMPANY ) DOCKET NO.  
 ) 00 -0461  
Proposed new Rider MVI and revisions )  
to Rider TC. )CONSOLIDATED

Springfield, Illinois  
October 3, 2000

Met, pursuant to notice, at 9:30 A.M.

BEFORE:

MR. LARRY JONES, Examiner

SULLIVAN REPORTING COMPANY, by  
Cheryl A. Davis, Reporter, #084 -001662  
Carla J. Boehl, Reporter, CSR # 084 -002710

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1 PROCEEDINGS

2 (Whereupon prior to the  
3 hearing NewEnergy Exhibits 1,  
4 2, 3, and 4 were marked for  
5 identification.)

6 EXAMINER JONES: On the record.

7 Good morning again. This is a hearing in  
8 the following consolidated cases: 00-0259,  
9 Commonwealth Edison Company, petition for approval  
10 of implementation of market-based alternative  
11 tariff; 00-0395, Ameren Companies, petition for  
12 approval of revisions to market value tariff;  
13 Illinois Power Company, 00-0461, proposed new Rider  
14 MVI and revisions to Rider TC.

15 At this time we will take the appearances  
16 orally for the record. You do not -- if you  
17 appeared yesterday, you do not need give us your  
18 phone number or really any other information, but  
19 you may if you want. Let's start with Commonwealth  
20 Edison Company.

21 MS. READ: Sarah Read, Cam Findlay, Courtney  
22 Rosen, Sidley & Austin, for Commonwealth Edison

1 Company.

2 EXAMINER JONES: Thank you.

3 Illinois Power Company.

4 MR. LAKSHMANAN: Joseph L. Lakshmanan, appearing  
5 on behalf of Illinois Power Company.

6 EXAMINER JONES: All right.

7 Ameren Companies.

8 MR. FLYNN: Christopher Flynn, on behalf of the  
9 Ameren Companies.

10 EXAMINER JONES: Okay.

11 NewEnergy?

12 MR. FEIN: David I. Fein and Christopher J.  
13 Townsend, as well as Julie Hextell, on behalf of  
14 NewEnergy.

15 EXAMINER JONES: Commission Staff.

16 MR. REVETHIS: Steven G. Revethis and John C.  
17 Feeley, on behalf of the Illinois Commerce  
18 Commission Staff, Mr. Examiner.

19 EXAMINER JONES: CILCO.

20 MR. SEIDEL: W. Michael Seidel, for the law firm  
21 of Defrees and Fiske, for Central Illinois Light  
22 Company.

1 EXAMINER JONES: IIEC.

2 MR. ROBERTSON: Eric Robertson and Edward  
3 Fitzhenry, Lueders, Robertson & Konzen.

4 EXAMINER JONES: Nicor.

5 MR. MUNSON: On behalf of Nicor Energy, Michael  
6 Munson, 233 South Wacker Drive, Chicago, Illinois  
7 60606, (312)474-7872.

8 EXAMINER JONES: Okay. Thank you.

9 Unicom Energy.

10 Okay. Thank you.

11 Are there any other appearances to be  
12 entered this morning by parties?

13 MR. WARREN: R. Lawrence Warren and Mark  
14 Kaminski, for the Attorney General's Office, on  
15 behalf of the People of the State of Illinois.

16 EXAMINER JONES: Okay. Thank you.

17 Are there any other parties to enter  
18 appearances this morning? Okay. Let the record  
19 show there are not at this time.

20 I think we pretty well have our witness  
21 lineup for today's hearing. Just to sort of touch  
22 basis on that very briefly, we hereby go off the



1 record.

2 (Whereupon at this point in  
3 the proceedings an  
4 off-the-record discussion  
5 transpired.)

6 EXAMINER JONES: Back on the record.

7 There was an off-the-record discussion for  
8 the purposes indicated.

9 We kind of went through today's witness  
10 lineup and looked at some estimated  
11 cross-examination times. It appears that there is  
12 no cross-examination for Nicor Energy witness  
13 Bailey, so I believe that that party would like to  
14 call that individual at this time. Is that right?

15 MR. MUNSON: Yes.

16 EXAMINER JONES: All right. Would you stand and  
17 raise your right hand to be sworn, please.

18 (Whereupon the witness was  
19 sworn by Examiner Jones.)

20 All right. Thank you. Please be seated.

21

22

1 KOBY A. BAILEY  
2 called as a witness on behalf of Nicor Energy,  
3 having been first duly sworn, was examined and  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MUNSON:

7 Q. Would you please state your name and  
8 business address for the record?

9 THE WITNESS:

10 A. Koby A. Bailey, 1844 Ferry Road,  
11 Naperville, Illinois 60563.

12 Q. On whose behalf are you testifying in this  
13 proceeding?

14 A. Nicor Energy.

15 Q. In front of you you have what's been  
16 marked Nicor Energy Exhibits 1.0 and 2.0 with  
17 Exhibits 2.1 through 2.6. Is that correct?

18 A. That's correct.

19 Q. Was this testimony prepared by you or  
20 under your direction or supervision?

21 A. Yes, it was.

22 Q. Do you have any corrections or

1 modifications to make?

2 A. No, I do not.

3 Q. If I were to ask you the same questions as  
4 set forth in the testimony, would your answers be  
5 the same?

6 A. Yes.

7 MR. MUNSON: At this time, Mr. Hearing Examiner,  
8 I move for admission of Nicor Energy Exhibits 1.0,  
9 2.0, and the Exhibits 2.1 to 2.6.

10 EXAMINER JONES: Any objection? There is none.  
11 The Nicor exhibits sponsored by Mr. Bailey, 1.0, 2.0  
12 through 2.6, inclusive, are admitted into the  
13 evidentiary record at this time.

14 (Whereupon Nicor Energy  
15 Exhibits 1.0 and 2.0 through  
16 2.6, inclusive, were received  
17 into evidence.)

18 Copies of that testimony were previously  
19 distributed to other parties. Is that right?

20 MR. MUNSON: That's correct.

21 EXAMINER JONES: So Nicor Energy is given leave  
22 to submit a copy to be marked as the official

1 exhibit copy in this case.

2 MR. MUNSON: Commonwealth Edison was kind enough  
3 to provide me with their copies, so I will be able  
4 to give those to the Court Reporter right now.

5 EXAMINER JONES: Okay.

6 All right. Thank you, Mr. Bailey.

7 THE WITNESS: Thank you.

8 (Witness excused.)

9 EXAMINER JONES: Do you just want it Nicor or  
10 how do you want it?

11 MR. MUNSON: Nicor Energy.

12 EXAMINER JONES: Nicor Energy. Okay.

13 (Whereupon Nicor Energy  
14 Exhibits 1.0 and 2.0 through  
15 2.6, inclusive, were marked  
16 for identification.)

17 EXAMINER JONES: All right. Let me note that  
18 the prefix on those exhibits is Nicor Energy. The  
19 numbers are as stated.

20 On the subject of exhibits, again, before  
21 I forget, the IP exhibits sponsored through  
22 witnesses Jones and Peters yesterday, IP Exhibits

1 2.1 through 2.8, were offered. They are admitted  
2 into the evidentiary record.

3 (Whereupon IP Exhibits 2.1  
4 through 2.8 were again  
5 received into evidence.)

6 All right. I think that brings us back to  
7 Ms. Juracek once again.

8 Please raise your right hand to be sworn.

9 (Whereupon the witness was  
10 sworn by Examiner Jones.)

11 Thank you.

12 ARLENE A. JURACEK

13 called as a witness on behalf of Commonwealth Edison  
14 Company, having been first duly sworn, was examined  
15 and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. FINDLAY:

18 Q. Ms. Juracek, could you state your full  
19 name for the record, please?

20 THE WITNESS:

21 A. Arlene A. Juracek, J-U-R-A-C-E-K.

22 Q. And by whom are you employed and in what

1 position?

2 A. I'm a Vice President at Commonwealth  
3 Edison Company.

4 Q. Do you have before you the exhibits which  
5 have been marked as ComEd Exhibit 2 and ComEd  
6 Exhibit 3?

7 A. Could you tell me what 2 and 3 are? Mine  
8 are not marked that way.

9 Q. Two is the Direct Testimony of Arlene A.  
10 Juracek, and 3 is Commonwealth Edison Company's  
11 Verified Response to the Illinois Commerce  
12 Commission's Questions Dated April 13, 2000.

13 A. Yes.

14 Q. Were these documents prepared by you or  
15 under your supervision?

16 A. Yes.

17 Q. And if you were asked the questions that  
18 are in these documents today, would you give the  
19 same answers?

20 A. Yes, with the addition that since this  
21 testimony was written in March my duties have  
22 expanded to include oversight of ComEd energy

1 deliveries, legislative and regulatory functions,  
2 but the duties as stated therein also remain.

3 Q. And with that exception, are all the  
4 statements true and correct to the best of your  
5 knowledge?

6 A. Yes.

7 MR. FINDLAY: With that, I would move for the  
8 admission of ComEd Exhibit 2 and ComEd Exhibit 3 and  
9 tender the witness for cross-examination.

10 EXAMINER JONES: Any responses to those motions?

11 MR. ROBERTSON: Yeah, I have. It's a point of  
12 clarification. I may not have an objection at all.  
13 I understand that Exhibit 2 was Ms. Juracek's  
14 previously presented direct testimony, and it was my  
15 understanding ComEd intended to use that testimony  
16 in this proceeding. I was not aware that ComEd  
17 intended to present as part of her testimony the  
18 verified responses, and you may have said this in  
19 correspondence, and if you did, that's fine. If  
20 not, then the parties either need to be served with  
21 a copy or need to be advised that the company  
22 intended to rely on those responses because they

1     were not testimony in the strictest sense.

2           MR. FINDLAY: Well, I think you were served with  
3     copies of both documents at the time that both  
4     documents were presented, and, in fact, the  
5     Commission stated in its initial order that both the  
6     testimony and the verified comments and responses  
7     are part of the record in the first part of the  
8     proceeding. All we're doing is permitting  
9     cross-examination on and admitting the document for  
10    the formal hearing part of the proceeding.

11          MR. ROBERTSON: Well, I believe that you're  
12    entitled to put whatever evidence you would like in  
13    this docket, and the record in 00-0259 is not with  
14    the Commission any longer. It's in the Appellate  
15    Court, so there's nothing from that record to  
16    incorporate in this proceeding, and, secondly, my  
17    point was not so much to that, but my point was the  
18    company did announce that it intended to rely or  
19    present Ms. Juracek's testimony as presented  
20    previously, but to the best of my recollection I  
21    don't believe that it announced that it intended to  
22    use these verified questions and answers, so the



1 ability to cross her on those is limited, and so I  
2 guess I would object to the verified responses being  
3 admitted at this time since they weren't previously  
4 identified as being the subject of the company's  
5 continued presentation here and they weren't  
6 distributed to the parties prior to this hearing so  
7 that they would be advised and be able to prepare  
8 for cross.

9 MR. FINDLAY: Mr. Hearing Examiner, could I  
10 respond to the objection?

11 EXAMINER JONES: Yes.

12 MR. FINDLAY: Mr. Robertson's first argument was  
13 that all the documents from the first part of Docket  
14 00-0259 are not in this proceeding and they're  
15 before the Appellate Court. All the parties have  
16 been relying on and questioning about and  
17 presenting, as we are, documents from the first part  
18 of the proceeding. In fact, Mr. Robertson made a  
19 motion to the Appellate Court to stay these  
20 proceedings, and the Appellate Court rejected it.  
21 So the Commission's earlier order that all this  
22 material is part of the record is still operative.

1           And Mr. Robertson's second point was  
2   somehow he doesn't have an ability to cross-examine  
3   the witness on this. You have every ability to  
4   cross-examine the witness you want, and you can ask  
5   any question. It has been in your possession for  
6   many, many months now, just as her testimony has  
7   been.

8           MS. READ: And I would just add, the comments  
9   expanded the testimony at the Commission's request.  
10   That was testimony and additional evidence we were  
11   asked to put in the first proceeding. Ms. Jurasek  
12   verified it, and that's why she's here to be crossed  
13   on it.

14          MR. ROBERTSON: Well, I'm not going to belabor  
15   the point, but just to make sure that everybody  
16   understands what my point is, the company announced  
17   that it would not present additional direct  
18   testimony in this proceeding because it was going to  
19   rely on the testimony that it had previously  
20   prepared by  
21   Ms. Juracek, Mr. Crumrine, and Mr. Nichols. The  
22   company has presented rebuttal testimony in the

1 proceeding, and my only point is that people are  
2 entitled to know what the basis for the other side's  
3 case is. They did not announce, to the best of my  
4 recollection, that they intended to rely on these  
5 responses to questions raised by the Commission as a  
6 component of this witness's direct testimony in this  
7 proceeding. They have introduced these as new  
8 exhibits here. They were not marked and identified  
9 as exhibits in the other proceeding.

10 EXAMINER JONES: Well, I'm going to have to  
11 interrupt you right now. One thing we don't have  
12 time to do is this this morning. We're going to  
13 proceed. The witness can put these in.

14 I'm not going to rule on the second one.  
15 If you have any cross-examination questions, if you  
16 choose not to ask them this morning, you do so at  
17 your own risk, subject to whatever the ruling is.  
18 If it's subsequently ruled that you are entitled to  
19 more preparation time, then the witness will have to  
20 come back, if you at that time receive a favorable  
21 ruling, Mr. Robertson, and also want to exercise  
22 that right to ask this witness some additional

1 questions.

2           It sounds like there was a little bit of a  
3 misunderstanding here due, in part, to the  
4 bifurcated nature of this proceeding, and I think  
5 that those kinds of problems can come up, but I  
6 think one thing we do need to do is we need to move  
7 forward.

8           So at this time -- let's see how these are  
9 marked here -- ComEd Exhibit Number 2 is admitted.

10                               (Whereupon ComEd Exhibit 2  
11                               was received into evidence.)

12           I'll withhold the ruling on the admission  
13 of ComEd Number 3, but this witness will be  
14 cross-examined at this time, and this witness will  
15 not have to come back and be cross-examined later  
16 unless it is determined by a ruling that that  
17 opportunity should be provided, and we will take  
18 that up at a later point, but we do not have time to  
19 take it up now.

20           MR. ROBERTSON: I wonder if I could ask the  
21 company if they have an extra copy of the Exhibit  
22 Number 3. Is that the right number? Yes.

1 MS. READ: We did. We gave one extra to the  
2 Court Reporter, so let me double-check and see how  
3 many others we have.

4 MR. FINDLAY: Eric, why don't you use this one,  
5 and I'll borrow one from the Court Reporter.

6 MR. FEIN: Mr. Examiner, if you'd like, we could  
7 proceed while Mr. Robertson reviews that document.

8 EXAMINER JONES: I'm sorry?

9 MR. FEIN: I said if you'd like, we could  
10 proceed with our cross-examination, if you'd like.

11 EXAMINER JONES: Let's talk about that just a  
12 minute. We hereby go off the record.

13 (Whereupon at this point in  
14 the proceedings an  
15 off-the-record discussion  
16 transpired.)

17 EXAMINER JONES: Back on the record.

18 There was a short off-the-record  
19 discussion regarding the question of the  
20 cross-examination of Ms. Juracek. In any event, I  
21 think Mr. Fein has offered to go first, and then  
22 we'll see where we're at with the question that came

1 up after he has finished his cross-examination. So  
2 Mr. Fein.

3 MR. FEIN: Thank you, Mr. Examiner.

4 CROSS EXAMINATION

5 BY MR. FEIN:

6 Q. Good morning, Ms. Juracek.

7 A. Good morning.

8 Q. On page 5 of your direct testimony you  
9 discuss why the methodology proposed by the company  
10 is preferable to the Neutral Fact Finder process.  
11 Do you see that question and answer that begins on I  
12 believe line 15?

13 A. Yes.

14 Q. And you discuss a number of  
15 characteristics that you list there, including  
16 accuracy, objectivity, and transparency, that an  
17 effective methodology to estimate the market value  
18 should include.

19 A. Yes.

20 Q. Are there any other characteristics that  
21 an effective methodology to estimate the market  
22 value should include other than those that you've

1 listed there and then that you discuss in your  
2 testimony?

3 A. Certainly in the context of this  
4 proceeding they should be -- it should be a  
5 methodology that the Commission finds to be  
6 appropriate and that parties are comfortable with,  
7 and by looking at the accuracy, objectivity, and  
8 transparency, you go a long way towards providing  
9 those reassurances that would allow Commission  
10 approval.

11 Q. Regarding any specific characteristics,  
12 would you believe that an effective methodology to  
13 estimate the market value -- actually let me  
14 rephrase the question.

15 Would you agree that an effective  
16 methodology to estimate the market value should  
17 address issues that have characteristics relating to  
18 imbalances?

19 A. No.

20 Q. Would you agree that an effective  
21 methodology to estimate the market value should  
22 include issues related to optionality?

1           A.     Yes, and I believe ComEd's proposal does.

2           Q.     Do you believe an effective methodology to  
3 estimate the market value should include forecasting  
4 risk?

5           A.     That's a difficult one to answer.  
6 Certainly there will be forecasting risk incurred in  
7 operating in an open access regime, and I believe  
8 the price shaping that we do accommodates some of  
9 the issues with respect to the need to buy power in  
10 potentially high cost hours. It's a probabilistic  
11 approach to that extent, but the actual forecasting  
12 risk incurred by a scheduler is certainly not  
13 something that ought to be reflected here. That  
14 relies solely on the skill level of the scheduler  
15 and the nature of the loads that he's serving.

16          Q.     Now beginning at the bottom of page 6 and  
17 continuing on to page 7 you discuss your  
18 characteristic of objectivity. Do you see that  
19 portion of your testimony?

20          A.     Yes.

21          Q.     And in that discussion you discuss the  
22 difficulty for any party to manipulate the company's



1 methodology.

2 A. Yes.

3 Q. Now isn't it true that the company may  
4 select parties with whom they choose not to trade  
5 with under the company's proposal?

6 A. Any subscriber to the Altrade system, and  
7 I also believe the Bloomberg system, but I'm more  
8 familiar with Altrade system, can choose to enable  
9 or disable any other party from transactions.  
10 That's correct.

11 Q. Are you aware which -- well, strike that.  
12 Isn't it true that under the company's  
13 proposal that the counteroffers or counterbids that  
14 you discuss, in order to be considered for purpose  
15 of the market value assessment under the proposal,  
16 would have to occur almost simultaneously as the  
17 original offer and bid?

18 A. I don't believe that's true. Mr. Nichols  
19 I believe can address that with a little more  
20 confidence.

21 Q. Are you aware who has posted the most  
22 trades on the Altrade exchange to date?

1           A.     No.

2           Q.     How about Bloomberg?

3           A.     No.

4           Q.     Is that question more properly directed to  
5 any of the other company witnesses?

6           A.     Certainly Mr. Nichols is familiar with  
7 that, but your question is extremely broad. The  
8 most trades on Altrade for what? Where?

9           Q.     For Commonwealth Edison.

10          A.     For the Into ComEd?

11          Q.     Yes.

12          A.     Posted the most --

13          Q.     Number of trades.

14          A.     Well, one does not post a trade. One  
15 posts a bid and an offer, and the exchange does the  
16 matching, so I suppose it's the exchange that posts  
17 the trade. I believe that ComEd has been a party in  
18 a good number of those matches.

19          Q.     When you say a good number, would that be  
20 more than half?

21          A.     I believe so, for the Into ComEd products.

22          Q.     But you don't know the actual number

1 compared to other participants in that exchange.

2 A. I don't have those numbers with me, no.

3 Q. You would agree, would you not, that if a  
4 market is thinly traded, that market manipulation  
5 can occur?

6 A. Only if the market does not share the  
7 characteristic of transparency, which I believe the  
8 Altrade and Bloomberg markets do. In addition, we  
9 don't know who the other parties are in any of those  
10 trades that ComEd has done. It takes two to tango.

11 MR. FEIN: I move to strike that last portion of  
12 the answer as nonresponsive to the question.

13 MR. FINDLAY: I think it's responsive that it  
14 takes two people to come to a transaction. She's  
15 used a colloquialism to state that.

16 EXAMINER JONES: Can I hear the question,  
17 Ms. Reporter?

18 (Whereupon the requested  
19 portion of the record was read  
20 back by the Court Reporter.)

21 EXAMINER JONES: I think that last portion of  
22 that answer was reasonably responsive, so objection

1    overruled.

2           MR. FEIN:

3           Q.     Regarding the two-to-tango phrase that you  
4    utilized, are you aware how many transactions the  
5    company has tangoed with any of its affiliates?

6           MR. FINDLAY: I have to object to this question  
7    because it's getting into confidential and  
8    proprietary information.

9           EXAMINER JONES: How so?

10          MR. FINDLAY: Well, the trades that ComEd does  
11    with any party, including its affiliates, which  
12    under the functional separation rules maintain  
13    arm-lengths relations with, are highly confidential  
14    and sensitive.

15          MS. READ: And, Your Honor, I would note there  
16    were data requests specifically on this. They were  
17    objected to on those grounds. Certain parties chose  
18    to sign a confidentiality agreement and got that  
19    data. No one moved to compel. This is data that's  
20    not given to direct competitors.

21          MR. FEIN: Actually, it's my understanding that  
22    my client actually did execute a confidentiality

1 agreement, and we were never provided with such  
2 information.

3 MS. READ: Your client executed a  
4 confidentiality agreement at the very end of last  
5 week, after having had it for weeks and weeks, and  
6 this specific market data you were told did not go  
7 to competitors. That's reflected in the  
8 confidentiality agreement. I thought you had agreed  
9 to that. You made similar objections in response to  
10 our data requests, and we timely filed a -- signed a  
11 confidentiality agreement, and you have not provided  
12 similar data to us. So we could get into a  
13 discovery dispute as to who gets to see whose market  
14 data, but I thought the resolution was we were going  
15 to respect that line.

16 MR. FEIN: We don't need to. It's not my  
17 understanding of what the discovery disagreement was  
18 at all.

19 EXAMINER JONES: Well, there's no way to rule on  
20 this based on the information you've given me. I  
21 mean there's absolutely no way to make a ruling on  
22 that, and we need to move forward here. What do you

1 suggest?

2 MR. FEIN: Well, if the objection is that we're  
3 not going to produce because you haven't produced,  
4 we'd be willing to produce the information subject  
5 to the confidentiality agreement. I don't know if  
6 that solves the issue.

7 MR. FINDLAY: The objection actually was to the  
8 question, and one of the bases for the objection was  
9 that this is material that is sought through a data  
10 request and we told them we could not give to them  
11 many, many weeks ago. On Friday afternoon, mid  
12 afternoon, we did get a confidentiality agreement  
13 from them.

14 EXAMINER JONES: I hate to interrupt you, but we  
15 hereby go off the record to give the parties a  
16 chance to discuss this briefly among themselves.  
17 There is obviously some kind of misunderstanding  
18 here about where this is at, and given the nature of  
19 this exhibit, arguing it on the record right now  
20 would be very pointless and very time consuming, so  
21 for that purpose we hereby go off the record.

22 (Whereupon at this point in

1                   the proceedings an  
2                   off-the-record discussion  
3                   transpired.)

4       EXAMINER JONES: Back on the record.

5                   There was an off-the-record discussion for  
6       the reasons given.

7                   It is my understanding that the parties  
8       have worked out some sort of an arrangement on this.  
9       Is it something you want to note for the record or  
10      just proceed?

11      MR. FEIN: Just very briefly. We believe we've  
12      worked something out. It's subject to review. A  
13      data request was already submitted. The company  
14      will be providing it to us. In any event, I think  
15      the issues related to that were represented by the  
16      company as probably more appropriately addressed to  
17      another witness anyway, so we believe, upon review  
18      of that, we may be able to resolve the issue.

19      MS. READ: And just so the record is clear, I  
20      think it's we're showing you the data request, not  
21      the response.

22      MR. FEIN: That's right, data request.

1 MS. READ: Yes.

2 EXAMINER JONES: Thank you.

3 MR. ROBERTSON: On the issue that I had, the  
4 company and I have agreed that we'll ask you to  
5 reserve ruling on this exhibit so my expert can  
6 review it this evening to see whether or not we have  
7 a problem with the substance of it, and if we don't,  
8 then we won't make a mountain out of a molehill, and  
9 we'll let you know tomorrow morning, and if we do  
10 have a problem, Ms. Read and I will try to work  
11 something out about how to handle it.

12 EXAMINER JONES: All right. Is that your  
13 understanding of how that will happen?

14 MS. READ: Absolutely.

15 EXAMINER JONES: All right. Thank you.

16 All right, Mr. Fein, your next question,  
17 sir.

18 MR. FEIN: Thank you.

19 Q. Ms. Juracek, under the company's proposal,  
20 there presently is not an independent third party  
21 executor for calculating the market values utilized  
22 on either Altrade or Bloomberg. Is that correct?



1           A.     If by executor you mean someone who will  
2     separately and independently take screen prints and  
3     do the calculation, that is correct.

4           Q.     Now under the company's proposal, the  
5     daily screen prints for both Altrade and Bloomberg,  
6     those occur during it's a two-hour window? Is that  
7     correct?

8           A.     I don't recall the specific window.  
9     Mr. Nichols or Mr. Crumrine could tell you, but  
10    there is a period in the morning that's at least an  
11    hour and a period in the afternoon that's at least  
12    an hour.

13          Q.     Isn't it true that the company always  
14    receives notice by way of a DASR of at least seven  
15    days prior to a customer's scheduled switch?

16          A.     Assuming that the RES does what it's  
17    suppose to do, that's correct.

18          Q.     Sometimes, based upon the DASR rules, that  
19    notice can be as high as I believe 45 days, based  
20    upon a customer's billing cycle. Is that correct?

21          A.     Yes.

22          Q.     And is it also true that RCDS customers

1 must switch for a minimum of one billing cycle?

2 A. That is no longer true.

3 Q. And is that as a result of the off-cycle  
4 switching that's been proposed by the company?

5 A. Yes, and I believe that became effective  
6 Sunday or Monday.

7 Q. Absent a customer utilizing the off-cycle  
8 switching, the new off-cycle switching proposal,  
9 would it be correct that RCDS customers must switch  
10 for a minimum of one billing cycle?

11 A. I don't believe that's true given the  
12 operation of our Rider TS, the Transition Service  
13 rate. It is possible for a customer to be let go by  
14 its supplier, and we do have this mechanism to  
15 ensure the customer has continuous service. They do  
16 stay under delivery services, but they don't  
17 necessarily stay with that same provider.

18 Q. Right. In that example you gave, the  
19 Rider TS, Transition Service.

20 A. Yes.

21 Q. That is when a supplier I think you used  
22 the phrase drops a customer?

1           A.     Yes.

2           Q.     Now is it correct that a customer  
3     selecting the company's PPO market index today would  
4     continue with PPO service until May of 2001?

5           A.     They would continue through their May  
6     billing period, yes.

7           Q.     Do you have any knowledge regarding how  
8     many customers have opted for RCDS service and then  
9     returned to bundled rates after one billing cycle?

10          A.     I'm thinking about the statistics that I  
11     got personally, and I believe the return to bundled  
12     tariff generally has been less than ten customers  
13     total. I don't know how many of those did it in one  
14     billing cycle or less.

15          Q.     Would you agree that in forecasting --  
16     strike that.

17                 Would you agree that there is a  
18     forecasting risk associated with normal operations  
19     of serving native load?

20          A.     Yes.

21          Q.     Are you aware whether the company offers  
22     any products designed to serve unique load

1 requirements?

2 MR. FINDLAY: Objection. Could you try and  
3 rephrase that question? I don't think the term  
4 unique load requirements is self-defined.

5 Q. Are you familiar with what is meant by  
6 unique load requirements?

7 A. It's a fairly generic term. I could cite  
8 all kinds of things. For example, the company's  
9 Standby Service, Rate 18, serves unique load  
10 requirements.

11 Q. Are you aware of any of the so-called  
12 flexible products that the company offers regarding  
13 wholesale energy?

14 A. I'm aware that we developed a product  
15 specifically for large industrial customers, such as  
16 steel customers who have very difficult to predict  
17 loads, and have offered that product on I believe  
18 it's an ancillary services basis or related to  
19 ancillary services.

20 Q. Let me ask you a few questions regarding  
21 this new off-cycle switching service that you  
22 mention.

1           A.     Okay.

2           Q.     Now you stated that -- well, let me ask  
3     you this.  Is an ARES, to the best of your  
4     knowledge, allowed to switch a customer with less  
5     than seven days' notice?

6           A.     No, I believe we still need the seven  
7     days' notice.  It's a seven calendar day.  We went  
8     from a ten business day to a seven calendar day.

9           Q.     Is it also correct that a rescind DASR  
10    must be submitted no less than five days before the  
11    rescind occurs?

12          A.     Yes.

13          Q.     Can a supplier drop a customer mid cycle?

14          A.     That's the whole point of Rider TS.  Yes.

15          Q.     The way your transition service operates,  
16    as I understand it, is that a customer would not be  
17    placed on that service until its billing cycle  
18    occurred.

19          A.     No, that's not correct.  Otherwise there  
20    would not be transition service.

21          MR. FINDLAY:  Let me just -- I want to  
22    understand how this whole line of questioning is

1 relevant to Ms. Juracek's testimony. I've stayed  
2 quiet because of the time constraints, but I think  
3 it's turning out to be counterproductive.  
4 Ms. Juracek didn't testify about any of these  
5 things, and we're about six or seven questions into  
6 this, and I don't understand to what portion of the  
7 testimony it relates.

8 MR. FEIN: Well, actually Ms. Juracek gave a --  
9 I asked a question on switching, and she told me  
10 about a new service, and I was just trying to  
11 understand how that operated within the context of  
12 her testimony on the stand. This was actually one  
13 of the last questions I had on this issue, so if we  
14 could --

15 MR. FINDLAY: I didn't understand how the first  
16 question was relevant, but if you only have one more  
17 question, then no real harm I guess.

18 EXAMINER JONES: I think the last question may  
19 have actually been answered. Did you get the  
20 answer, Ms. Reporter?

21 REPORTER DAVIS: I think so.

22 EXAMINER JONES: All right. Thank you.

1                   Did you get a chance to complete your  
2 answer?

3           THE WITNESS: Yes.

4           EXAMINER JONES: Okay. Thank you.

5           MR. FEIN:

6           Q.     The final question in this answer was, can  
7 a customer select an off-cycle switch date, switch  
8 for a partial cycle, and then return to bundled  
9 service?

10          A.     I think if timing is such that a DASR can  
11 be submitted in a timely way to switch the customer,  
12 depending on the timing of its billing cycle and its  
13 off-cycle switch date, it would be possible to do  
14 that.

15          Q.     But in that instance, a customer still  
16 must give I believe it's thirty days' notice before  
17 returning to bundled service under the company's  
18 tariffs. Isn't that correct?

19          A.     There is a notice provision provided for,  
20 and, again, we would have to take a look at the  
21 paperwork, etc. that's for a customer voluntarily  
22 switching. There is still Rider TS in the event

1     that the supplier finds it unproductive to serve  
2     this customer and, as we said, unceremoniously dumps  
3     the customer. That was our design term for Rider  
4     TS, so it would be possible for that customer to be  
5     shed by its supplier.

6           Q.     Right, but Rider TS isn't a bundled  
7     service.

8           A.     No, but once one goes to Rider TS, one has  
9     three-and-a-half billing cycles to select bundled  
10    service, and I simply don't recall how a 30 -day  
11    notice period works within that.

12          Q.     So you're not aware of whether there's a  
13    requirement in your tariffs whether a customer must  
14    give thirty days' written notice before they return  
15    to bundled service.

16          A.     I'm sure Mr. Crumrine, who is our rate  
17    witness here, will have that answer.

18          Q.     Okay.

19                 Are you familiar with the term full  
20    requirements service?

21          A.     Yes.

22          Q.     And that is through the company's bundled



1 service? That's the type of service that ComEd  
2 furnishes to its customer?

3 A. Well, there's a full requirements retail  
4 service. There are also a full requirements  
5 wholesale service of products.

6 Q. Regarding full requirements retail  
7 service, the company is obligated to provide all the  
8 electricity needs of a given customer. Is that  
9 correct?

10 A. Only to the extent the customer doesn't  
11 self-generate or peel off a portion of its load to  
12 be served by a RES.

13 Q. Are there limits to how much or little  
14 power a customer can consume as a full requirements  
15 customer?

16 MR. FINDLAY: May I renew my objection? These  
17 last ten or so questions really don't have anything  
18 to do with what Ms. Juracek testified on direct, and  
19 we've gotten so far afield I don't know when we're  
20 going to circle back and tie it to what she's  
21 testified about.

22 MR. FEIN: Ms. Juracek's testimony is, as I

1 would describe it, a piece of testimony that  
2 outlines the company's entire proposal in this case,  
3 offers a number of reasons why it's a preferable  
4 methodology, highlights three characteristics of the  
5 proposal and why it's preferable. I have a right to  
6 cross-examine her regarding issues related to how  
7 the market operates here in Illinois to evaluate  
8 whether her opinions are correct.

9           It's actually the last question I had, and  
10 it's entirely relevant. It goes to the weight to be  
11 given to her testimony.

12       MR. FINDLAY: I still haven't heard how it's  
13 relevant to any portion of Ms. Juracek's testimony.  
14 I think that the most Mr. Fein has said is that it's  
15 relevant to the market as a whole and she kind of  
16 testifies about why this is good for the market, but  
17 asking about particular tariff services doesn't have  
18 anything to do with what she's testified about.

19       EXAMINER JONES: What was that part about the  
20 last question?

21       MR. FEIN: That was it.

22       EXAMINER JONES: That was your last question?

1 All right. It's kind of a close call, but I think  
2 it looks like this line of questioning is coming to  
3 a close, so I think we'll allow it as relevant to  
4 this witness's testimony.

5 MR. FEIN: I would note that the witness herself  
6 refers to a wholesale full requirements offer that  
7 is part of this proceeding.

8 EXAMINER JONES: Well, I think the arguments are  
9 made and the ruling is made, so. Did the question  
10 get answered?

11 MR. FEIN: I believe the last question was not  
12 answered.

13 EXAMINER JONES: All right. Do you recall the  
14 question, Ms. Juracek?

15 THE WITNESS: Would you ask the question again?

16 MR. FEIN: Sure.

17 Q. Under retail full requirements, what are  
18 the limits to how much power or little power a  
19 customer can consume?

20 A. The limits to how much power a customer  
21 can consume are certainly based on the size of their  
22 service entrance equipment, their transformer, and

1 the type of tariff that they're on. In certain  
2 circumstances a tariff may dictate how -- a limit to  
3 what can be consumed without incurring some  
4 financial cost on the part of the customer.

5           Conversely, on the down side, if a  
6 customer continuously consumes a lesser amount of  
7 electricity, it may, in fact, affect their charges,  
8 particularly with respect to optional facilities  
9 services.

10       MR. FEIN: No further questions, Mr. Examiner.

11       EXAMINER JONES: All right. Thank you,  
12 Mr. Fein.

13           Mr. Robertson, are you ready to proceed  
14 with yours?

15       MR. ROBERTSON: Yes, sir.

16           I did have a point of clarification with  
17 regard to the -- before I start my cross, it would  
18 be important to know how we're going to treat this.  
19 We have the Neutral Fact Finder's Report for 2000,  
20 and I don't know whether it is going to go into the  
21 record in this case to be referred to by the parties  
22 or whether anybody has an objection to doing that.

1 It seems to me that it's a relevant piece of  
2 material that the Commission would want to have in  
3 the record here.

4 MS. READ: I have no objection, if you have it,  
5 to it being marked as a cross exhibit. I also  
6 believe the Commission can take administrative  
7 notice of what it states but can't rely on it for  
8 the truth of the matter asserted. So with that  
9 understanding, if you just want a document to refer  
10 to, it is evidence of what he stated, but it is  
11 hearsay. It has therefore got limitations, and with  
12 that understanding, I don't know how other counsel  
13 feel, but we would not mind having it admitted as a  
14 cross exhibit so the parties can refer to it.

15 MR. ROBERTSON: I'd rather -- I don't want to  
16 take responsibility for what's in here and  
17 necessarily be bound by everything this gentleman  
18 has said, but maybe we can make it a joint -- a  
19 parties' exhibit or a joint cross exhibit of the  
20 parties so that we all agree that it goes in, or it  
21 can be the Hearing Examiner's exhibit as far as  
22 that's concerned.

1 MS. READ: Or the parties can simply agree that  
2 the Commission can take administrative notice of the  
3 facts of that report and that it stated what it  
4 stated, but it cannot be relied on for the truth of  
5 the matter asserted. Then it doesn't need to be  
6 marked, and we can all refer to it.

7 MR. ROBERTSON: Would there be a problem with  
8 making it a Hearing Examiner's exhibit and no party  
9 sponsors it?

10 EXAMINER JONES: I don't think I'll make that a  
11 Hearing Examiner's exhibit, no, but if you want to  
12 -- if there's -- if you want to put it into the  
13 evidentiary record on the basis of administrative  
14 notice by agreement of the parties, we can do that,  
15 if there's agreement on that. I don't know if the  
16 -- have the parties talked about this at all before  
17 this minute?

18 MS. READ: No.

19 EXAMINER JONES: It might be one of those things  
20 --

21 MR. ROBERTSON: Why don't I just go ahead and do  
22 the little bit of cross that I have, and we can

1     straighten this out later.

2           EXAMINER JONES: I think that -- again, I think  
3     it sounds like you're really not that far apart on  
4     this. There are probably some procedural mechanisms  
5     available. If you come to agreement on it, we'll  
6     certainly work with you on finding a way to get that  
7     agreement implemented.

8                           CROSS EXAMINATION

9           BY MR. ROBERTSON:

10          Q.     Ms. Juracek, could you look at page 6 at  
11     lines 1 through 2 of your direct testimony? Do you  
12     have that?

13          A.     Yes, I do.

14          Q.     You state that the first characteristic of  
15     an effective market value estimation methodology is  
16     that it produces reasonably accurate market values.  
17     How do you define accurate?

18          A.     Accurate to me in this context means  
19     reflective of the larger market that we're taking a  
20     window into. Certainly they should be  
21     contemporaneous values with the time that they're  
22     being used and reflect the type of price levels that

1 the marketplace is generally seeing.

2 Q. Now is the market you refer to here the  
3 forward market? The spot market? The long-term  
4 market? What product is involved in the market  
5 that's referenced here on page 6?

6 A. The market includes all of the above.  
7 It's really the system of buyers and sellers  
8 transacting for the electricity commodity in a  
9 region and in a certain time period.

10 Q. Now in the context of the April 2000 NFF  
11 report, would you agree with me that the NFF was  
12 presented with contract summaries that summarized  
13 5,953 contracts?

14 MR. FINDLAY: I just object. He hasn't  
15 established a foundation that she knows about the  
16 contents of the NFF report. You may be able to do  
17 that. I just don't know that --

18 Q. Ms. Juracek, I would be real surprised if  
19 you didn't know since you address it in your  
20 testimony.

21 A. Unfortunately, Mr. Robertson, I didn't  
22 memorize it. I cannot testify to any numbers in



1 that report.

2 Q. Would you be willing to accept, subject to  
3 check, that the NFF received summaries that included  
4 5,953 contracts?

5 A. Assuming that it's entered as testimony or  
6 as evidence in this case and that number will be  
7 there for everybody to see and correct, yes.

8 Q. Okay. I've got some other questions about  
9 the numbers. Would you like to have a copy of it so  
10 you can see?

11 A. Sure.

12 Q. Now would you agree, subject to check,  
13 that the NFF actually used 2,624 contracts to arrive  
14 at his value?

15 A. That's what it says here.

16 Q. And would you agree, subject to check,  
17 that there were 12 entities who reported contracts  
18 to the NFF?

19 A. Yes.

20 Q. And would you agree, subject to check,  
21 that of the -- I think this is correct -- that of  
22 the 2,624 contracts, he used 51 of them that were

1 entered into prior to June -- prior to July of 1999?

2 A. He states they were entered into on June  
3 30, 1999 or earlier, yes.

4 Q. And would you agree that he reported 2,753  
5 contracts that were entered into as of July 1, 1999  
6 or later?

7 A. Yes.

8 Q. Now other than -- I think we're done with  
9 that. Thank you.

10 I have some questions with regard to the  
11 company's response to a confidential data request,  
12 and I will go through the other brief questions I  
13 have, and then I'd like to come back to those  
14 because I don't know how you want to treat this as  
15 far as the confidentiality aspect. So I'd like to  
16 refer you now to ComEd -- what's been marked as  
17 ComEd Exhibit Number 3, Ms. Juracek, and I think  
18 it's the fifth page. It is the response to Question  
19 Number 4. Do you have that?

20 A. Yes.

21 Q. I'm looking at the last paragraph in that  
22 exhibit, and there it's indicated that ComEd would

1 not support the option of placing the tariff in  
2 effect for a defined period of time. Do you see  
3 that?

4 A. Yes.

5 Q. Now when you say would not support, can  
6 you tell me what that means?

7 A. The question from the Commission had been  
8 what if we allowed this tariff alternative to the  
9 Neutral Fact Finder to go into effect for a defined  
10 time period rather than for an indefinite time  
11 period, as many rates do go into effect, and  
12 basically ComEd indicated in its response that we  
13 did not think it was a good idea for the above  
14 reasons, and we're not proposing that nor were we  
15 endorsing that.

16 EXAMINER JONES: Pardon the interruption. What  
17 question were you --

18 MR. ROBERTSON: Number 4.

19 EXAMINER JONES: Thank you.

20 Q. Now if the Commission were to do that in  
21 the context of this case, what would Commonwealth  
22 Edison's position be?

1           A.     Well, first of all, ComEd is bound as a  
2     matter of law to conform with any Commission orders  
3     or take appropriate legal steps to stay those  
4     orders. We would reexamine our options at that time  
5     in the context of all the other events that  
6     surrounded that decision.

7           Q.     I'm sorry. That was a poorly stated  
8     question. I wasn't looking for what your legal  
9     response would be. I was wondering whether or not  
10    you had a change of heart and would agree to a  
11    tariff that had a time limit in it.

12          A.     No.

13          Q.     All right. And would the company agree to  
14    use Cinergy forwards as opposed to Into ComEd hub  
15    forwards in its methodology if the Commission were  
16    to direct that be done in this case?

17          A.     Again, we would certainly need to conform  
18    with the Commission's Order. I'm not prepared at  
19    this time to concede a switch to the Into Cinergy  
20    numbers for all the reasons stated in our various  
21    witnesses' testimony. We believe Into ComEd is  
22    preferable. It measures the market price in our

1 service area, and we believe that the market  
2 continues to need to see value in that index so that  
3 it will mature. If we keep switching away from it,  
4 it will never mature.

5 Q. Let me ask you about a different subject  
6 which has to do with the cost of Altrade and  
7 Bloomberg. Would you accept, subject to check, that  
8 in its response to IIEC Data Request Number 17 the  
9 company indicated that Price Waterhouse Coopers  
10 charged \$75,000 for historical data and \$5,250 per  
11 month for update service in relation to Altrade?

12 MR. FINDLAY: Do you have a copy of the data  
13 request you could show the witness?

14 (Whereupon said document was  
15 provided to the witness by  
16 Mr. Robertson.)

17 A. The answer is yes.

18 EXAMINER JONES: Ms. Reporter, could you read  
19 the question, please? I want to make sure what that  
20 says.

21 (Whereupon the requested  
22 portion of the record was read

1 back by the Court Reporter.)

2 A. If I could clarify, I don't recall that  
3 answer saying the 5,000 was per month.

4 Q. Would you believe me if I told you I lost  
5 it?

6 A. Okay. It's 5,250 per month for update  
7 service. That's correct. And if I could just  
8 clarify that, I believe that is for purposes of  
9 updating data. I don't believe that's the license  
10 fee for actually being able to do screen prints.

11 MR. ROBERTSON: Ordinarily I'd object, but to  
12 save some time on redirect.

13 Okay. I think I'm ready to ask questions  
14 about confidential data.

15 MR. FINDLAY: I think that we have to go to the  
16 procedure of clearing the room of those who have not  
17 signed the confidentiality agreement.

18 MS. READ: It's more than that. It's those who  
19 have access to the particular type of data, so if I  
20 can see what Mr. Robertson wants to use.

21 I will note for the record that ComEd will  
22 also be using this procedure at the end of its cross

1 of Dr. O'Connor and Mr. Bramschreiber, but I note  
2 for sure Staff and AG could stay in the room.

3 (Pause in the proceedings.)

4 MR. FINDLAY: It looks as if the data request  
5 that he wants answers to is one that any party that  
6 has signed the confidentiality agreement can listen  
7 to the line of questioning. Any parties that have  
8 not signed the confidentiality agreement -- actually  
9 individuals who have signed the confidentiality  
10 agreement can stay. Individuals who have not should  
11 step outside.

12 EXAMINER JONES: All right. Did everybody hear  
13 that?

14 MR. SEIDEL: I haven't sign the -- I'd like to  
15 sign the confidentiality agreement, but I didn't  
16 receive the data request or the data response, so I  
17 don't know what I'm missing out on, but I promise to  
18 keep it confidential.

19 MS. READ: It's because you didn't ask for it.

20 MR. SEIDEL: Thanks.

21 EXAMINER JONES: Mr. Findlay, do you just want  
22 to sort of tell the group? Announce loud enough for

1 the group to hear what you understand to be the  
2 rules of the game on the confidentiality.

3 MR. FINDLAY: Sure. We have confidentiality  
4 agreements with some but not all of the individuals  
5 in this room. Each individual that wants to stay in  
6 the room for this line of questioning I think has to  
7 individually execute a copy of the confidentiality  
8 agreement.

9 MR. WARREN: Mr. Examiner, just a housekeeping  
10 thing, at the last hearing that I was in we couldn't  
11 get a copy of the privileged part of the record  
12 without a statement from the Hearing Examiner saying  
13 we were entitled to it. It was required to be on  
14 the record, and so we had to have a letter submitted  
15 to the court reporters before they could release  
16 that to us, so I would request that you would just  
17 say that those that are here under the  
18 confidentiality agreement are entitled to that copy  
19 of the record.

20 EXAMINER JONES: Right. I think what we're  
21 going to have to do is make sure that it is known  
22 exactly which individuals that pertains to.



1           MR. WARREN: Right. Certainly I'm requesting it  
2 on behalf of the AG.

3           MS. READ: We know. You signed it.

4                   Let's see. Everyone from Staff is fine.

5           MR. REVETHIS: Yeah, we're fine.

6           MS. READ: You're fine. You're fine.

7                               (Whereupon at this point in  
8                               the proceedings an  
9                               off-the-record discussion  
10                              transpired.)

11          EXAMINER JONES: Now the intent is that we go in  
12 camera at this point.

13                   Is there anything of a more general nature  
14 in your questions that will not need to be in camera  
15 or do we need to get everything in camera from this  
16 question forward?

17          MR. ROBERTSON: I have one line of cross in  
18 relation to a single data request that's proprietary  
19 and confidential.

20          EXAMINER JONES: All right. So this entire line  
21 is in camera is what you're saying.

22          MR. ROBERTSON: Yeah.

1           EXAMINER JONES: All right. That's fine. We'd  
2 just like to limit the in camera as much as we can  
3 for a combination of reasons really that we won't go  
4 into at this point, but I'd just like to make sure  
5 that there is nothing in the way of questions that  
6 is treated in camera that doesn't have to be.

7           All right. So just so the record is  
8 clear, we hereby go in camera for purposes of this  
9 portion of Mr. Robertson's line of questioning.

10                               (Whereupon the following  
11                               pages 396 through  
12                               412 are contained under  
13                               separate cover for the in  
14                               camera portion of the  
15                               proceedings.)

16  
17  
18  
19  
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22

1           EXAMINER JONES: We hereby return to the non  
2 in camera or public portion of this transcript, so  
3 we need to give those who are not here a chance to  
4 return, if they want to.

5           MR. ROBERTSON: I'm not going to ask my  
6 question. I think it's a good place to stop. Thank  
7 you, Mr. Examiner.

8           EXAMINER JONES: I believe that's all the  
9 parties that had cross-examination questions for  
10 Ms. Juracek.

11                       Were there other parties that had  
12 questions for this witness? There are not.

13                       Does the company have redirect?

14           MR. FINDLAY: I think just one question.

15                       REDIRECT EXAMINATION

16           BY MR. FINDLAY:

17           Q.     You were asked a number of questions by  
18 Mr. Fein about the provisions of various tariffs of  
19 the company. Do you recall those questions?

20           A.     Yes.

21           Q.     If there is any discrepancy between your  
22 oral answers today and the terms of the tariffs

1 themselves, which control?

2 A. The terms of the tariffs.

3 MR. FINDLAY: That's all we have.

4 EXAMINER JONES: Any recross?

5 MR. FEIN: No.

6 EXAMINER JONES: All right. There is not.

7 Thank you, Ms. Juracek.

8 (Witness excused.)

9 Off the record regarding scheduling and  
10 related matters.

11 (Whereupon at this point in  
12 the proceedings an  
13 off-the-record discussion  
14 transpired.)

15 EXAMINER JONES: Back on the record.

16 We hereby take a five-minute break, and  
17 then when we get back we'll proceed with Mr. Kagan.

18 (Whereupon a short recess was  
19 taken.)

20 EXAMINER JONES: Ready to call your next  
21 witness?

22 MR. FEIN: Yes. NewEnergy Midwest, L.L.C. calls

1 Michael Kagan.

2 EXAMINER JONES: I don't think we've sworn you  
3 in, have we?

4 MR. KAGAN: No, you haven't.

5 EXAMINER JONES: Stand and raise your right  
6 hand, sir.

7 (Whereupon the witness was  
8 sworn by Examiner Jones.)

9 EXAMINER JONES: Thank you. Have a seat.

10 MICHAEL P. KAGAN  
11 called as a witness on behalf of NewEnergy Midwest,  
12 L.L.C., having been first duly sworn, was examined  
13 and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. FEIN:

16 Q. Mr. Kagan, could you please state your  
17 name and spell your last name for the record,  
18 please?

19 THE WITNESS:

20 A. My name is Michael P. Kagan, K-A-G-A-N.

21 Q. By whom are you employed and in what  
22 position?

1           A.     I am employed by NewEnergy, and my  
2     position is Vice President of Retail Commodity  
3     Pricing.

4           Q.     Do you have before you a document entitled  
5     Direct Testimony of Michael P. Kagan on Behalf of  
6     NewEnergy Midwest, L.L.C.?

7           A.     Yes, I do.

8           Q.     The document that has been marked as  
9     NewEnergy Exhibit Number 4 consists of questions and  
10    answers?

11          A.     Yes.

12          Q.     As well as an Attachment A which includes  
13    your current CV. Is that correct?

14          A.     There is no CV attached.

15          Q.     Is it your understanding that the filed  
16    copy included a current CV as an attachment to your  
17    testimony?

18          A.     That is my understanding.

19          Q.     Do you have any corrections or changes to  
20    your prefiled direct testimony in this proceeding?

21          A.     Yes, I do.

22          Q.     And could you tell us where those changes

1 appear?

2 A. Yes. Those corrections appear on page 4,  
3 line 5, where the word "witness" should be  
4 "witnesses", and on page 6, line 7, where the word  
5 "witness" should be "witnesses".

6 Q. Do you have any other changes or  
7 corrections to your prefiled testimony?

8 A. No, I do not.

9 Q. And it's your understanding that these  
10 corrections have been included on the copies that  
11 have been provided to the Hearing Examiner and the  
12 Court Reporter this morning?

13 A. Yes.

14 MR. FEIN: With that, NewEnergy would move for  
15 the admission of NewEnergy Exhibit Number 4, the  
16 Direct Testimony of Michael P. Kagan, and tender the  
17 witness for cross-examination.

18 EXAMINER JONES: Any objections?

19 MR. REVETHIS: No objection.

20 MR. FINDLAY: No objection.

21 EXAMINER JONES: Let the record show that  
22 NewEnergy Exhibit Number 4 sponsored by Mr. Kagan is

1 admitted.

2 (Whereupon NewEnergy Exhibit

3 4 was received into evidence.)

4 I believe ComEd indicated they had cross  
5 for this witness. Is that correct?

6 MR. FINDLAY: Yes, we do.

7 CROSS EXAMINATION

8 BY MR. FINDLAY:

9 Q. Mr. Kagan, you're employed by NewEnergy  
10 Inc. is that correct?

11 A. Correct.

12 Q. And NewEnergy Inc. is not the same as  
13 NewEnergy Midwest. Is that correct?

14 A. That's correct.

15 Q. Can you explain, since it's a little  
16 unclear, what the relationship between those two  
17 entities is?

18 A. I will try. NewEnergy is a very  
19 decentralized business where each geographic regi on  
20 is its own business, but we all collectively are a  
21 -- nationally have the same objective, so that we --  
22 while each -- there are separate businesses, the



1 company as a whole functions as a whole.

2 Q. Now, you work up in Boston. Is that  
3 correct?

4 A. That's correct.

5 Q. And you run the trading floor up there?  
6 Is that a fair statement?

7 A. Yes. It could be called a trading floor.  
8 Its purpose is to procure supply to serve our retail  
9 customers.

10 Q. Is it an electronic exchange or is it  
11 actually a physical pit where people are shouting at  
12 each other?

13 A. No. We have our own employees that work  
14 with electronic exchanges as well as broker markets,  
15 but it is generally electronic in nature. It's not  
16 a pit, as you had described it.

17 Q. And what volume of electricity is traded  
18 up in that exchange, say in a typical month?

19 MR. FEIN: Objection to the relevance of that  
20 and an additional objection to that's going to call  
21 for proprietary information regarding volume of  
22 trading.

1 MR. FINDLAY: I'll just withdraw the question.

2 Q. But you trade, you buy and sell  
3 electricity on an exchange up in Boston. Is that  
4 correct?

5 A. That's correct, for the primary purpose of  
6 serving our retail customers.

7 Q. Do you believe that any participant on  
8 your exchange in Boston has the ability to  
9 manipulate the market price?

10 MR. FEIN: I would object to the  
11 characterization of it as an exchange. The witness  
12 stated that the operation where Mr. Kagan works is  
13 not an exchange.

14 MR. FINDLAY: I thought he did say it's an  
15 exchange, but I'm happy to use a different term.

16 Q. What term would you use, Mr. Kagan, so I  
17 don't get in trouble?

18 A. I would refer to it as a marketing  
19 operation.

20 Q. All right. Do you believe that any  
21 participant in NewEnergy's marketing operation has  
22 the ability to manipulate the price?

1           A.     The price of what?

2           Q.     Electricity.

3           A.     At retail?

4           Q.     Any product of electricity up there.

5           A.     Yes.

6           Q.     Which participants do you believe have the  
7     ability to manipulate the price of electricity in  
8     your marketing operation up there?

9           A.     Any of the authorized traders.

10          Q.     It's your testimony that any authorized  
11     trader in your marketing operation has the ability  
12     to manipulate the price of electricity in that  
13     marketing operation?

14          A.     Under very specific circumstances that is  
15     possible, yes.

16          Q.     Now I think you said earlier that  
17     NewEnergy is a very decentralized operation, didn't  
18     you?

19          A.     Yes.

20          Q.     And you said that actually each of the  
21     regional areas are separate businesses. Is that  
22     correct?

1           A.     Correct.

2           Q.     It's fair to say, isn't it, that you don't  
3     trade Into ComEd energy on your trading floor up in  
4     Boston, do you?

5           MR. FEIN:  I object to the relevance of that.  I  
6     object to if you could tell me where in his  
7     testimony you're referring to something he discusses  
8     about --

9           MR. FINDLAY:  Well, the witness opines  
10    throughout his testimony on the buying and selling  
11    of Into ComEd products, and he also talks about his  
12    expertise based on the fact that he runs this  
13    trading floor, and so I think it goes to the weight  
14    to be given his testimony.

15          EXAMINER JONES:  Is this witness testifying as  
16    an expert?

17          MR. FEIN:  He's testifying as an expert on the  
18    appropriateness of the three items that he discusses  
19    in his testimony.

20          EXAMINER JONES:  But I mean is he testifying as  
21    an expert witness or is he not testifying as an  
22    expert witness?

1           MR. FEIN: The witness is testifying based upon  
2 his experience in these three limited areas he  
3 addresses in his testimony about his experience.

4           EXAMINER JONES: Well, he's either testifying as  
5 an expert or he isn't. Now he may be an expert in  
6 specific areas, but he's either testifying as an  
7 expert witness or he isn't. I think we're entitled  
8 to an answer to that question, as with any witness  
9 where this issue may potentially come up. That's a  
10 very basic question.

11          MR. FEIN: He is testifying as an expert on  
12 NewEnergy's trading function and his experience in  
13 that area.

14          MR. FINDLAY: So I think I can inquire into  
15 whether his experience includes the products that  
16 are at issue in this proceeding.

17          MR. FEIN: I'll withdraw the objection.

18          MR. FINDLAY:

19          Q. Do you remember the question, Mr. Kagan?

20          A. Please read it back.

21          Q. I'll give it another try, and we'll see if  
22 that works so we don't have to bother the Reporter.

1           It's fair to say that you don't trade much  
2   Into ComEd power and energy on your trading floor up  
3   in Boston, do you?

4       A.     Can you state the question again?

5       MR. FINDLAY: Do you want to read it back this  
6   time?

7                               (Whereupon the requested  
8                               portion of the record was read  
9                               back by the Court Reporter.)

10      A.     How do you define much?

11      Q.     More than 20 percent.

12      A.     Twenty percent of?

13      Q.     Of the volume on your exchange.

14      A.     As a number of trades or in volume?

15      Q.     Let's try each one. Number of trades,  
16   more than 20 percent?

17      A.     No, less than 20 percent.

18      Q.     Volume, more than 20 percent?

19      A.     Less than 20 percent.

20      Q.     Okay. NewEnergy has a website, doesn't  
21   it?

22      A.     I believe it does.

1           Q.     And NewEnergy is not in the business of  
2     putting intentionally misleading statements on its  
3     website, is it?

4           A.     I would hope not.

5           Q.     Is it correct, as the website states, that  
6     NewEnergy "maximizes the customer's buying power by  
7     aggregating load into a single portfolio"?

8           MR. FEIN:  Counsel, do you want to show the  
9     witness, if you're asking him to agree with  
10    something?

11          MR. FINDLAY:  Sure.

12          MR. FEIN:  He doesn't have his computer in front  
13    of him.

14          MR. FINDLAY:  Sure.

15                                 (Whereupon the witness was  
16                                 provided with a document by  
17                                 Mr. Findlay.)

18          A.     Thank you.

19          Q.     Have you ever looked at your website  
20    before, Mr. Kagan?

21          A.     Only portions of it.  I have not looked at  
22    this before.

1       Q.     But as you say, does this look to you like  
2     it's an accurate print from NewEnergy's website?

3       A.     It does look like it came from the  
4     website, yes.

5       Q.     Let me direct you to the second paragraph  
6     under approach. It says "This approach maximizes  
7     the customer's buying power by aggregating load into  
8     a single portfolio." That's correct, isn't it?

9       A.     In certain instances it is correct.

10      Q.     And in other instances this statement is  
11     incorrect. That's what you're saying?

12      A.     In other instances this statement doesn't  
13     apply to -- it doesn't apply to certain customers.

14      Q.     But for the customers to which it applies,  
15     this statement is correct. You do maximize that  
16     customer's buying power by aggregating load into a  
17     single portfolio. Correct?

18      A.     For certain customers of similar size,  
19     attributes, and so long as they're interested in  
20     that program.

21      Q.     And so for some customers you don't  
22     maximize their buying power?



1           A.     I'm not sure what that means.

2           Q.     Well, what does the term maximizes the  
3     customer's buying power mean to you?  It's from your  
4     website.

5           A.     It means giving access to electricity  
6     markets that a customer may otherwise not have.

7           Q.     You take small customers, you aggregate  
8     them together, and then they can get a better deal  
9     than they could have on their own.  That's all  
10    you're saying, right?

11          A.     That only applies to certain customers.  
12    This is very narrowly focused.  It's only one  
13    marketing approach and is, in fact, a minority of  
14    our business.

15          Q.     That's described in your website as  
16    "NewEnergy's approach".  Right?

17          A.     That's part of the same paragraph, yes.

18          Q.     And to go on down to the end of that  
19    paragraph, NewEnergy states, does it not, "We have  
20    greater flexibility to buy firm power when prices  
21    are low and to build, shape, and complement our  
22    portfolio, achieving a clear price advantage"?

1 That's what NewEnergy says, doesn't it? I'm not  
2 trying to trick you. I'm just asking if that's what  
3 it says.

4 A. I was listening to you. I wasn't looking  
5 at this. Where were you starting from?

6 Q. The end of that same paragraph. It's the  
7 last sentence in that paragraph.

8 A. Yes, it does say that.

9 EXAMINER JONES: Excuse me for interrupting.  
10 What is it you're reading from? Could you give us  
11 some identification?

12 MR. FINDLAY: Sure. It was a print printed out  
13 on September 26, 2000, from the NewEnergy website,  
14 [www.newenergy.Com/products/electricity.htm](http://www.newenergy.Com/products/electricity.htm).

15 EXAMINER JONES: Thank you.

16 Q. Before we get into some of the other  
17 issues, let me just be clear on one preliminary  
18 matter. We asked you if any workpapers or relied -  
19 upon documents supported your testimony, and your  
20 answer was that there are no such workpapers.  
21 Correct?

22 A. Correct.

1       Q.     All right.  You agree, don't you, that the  
2     idea of an index, in general, is a good idea and  
3     something that we believe should be pursued?

4       A.     Yes, I do believe that.

5       Q.     And NewEnergy has taken the position in  
6     the first part of this proceeding that ComEd's  
7     market value index methodology is preferable to the  
8     NFF process.  Isn't that right?

9       A.     Yes.

10      Q.     And you've read all the testimony in this  
11     proceeding?

12      A.     Most of it.

13      Q.     Have you read Dr. O'Connor's and  
14     Dr. Bramschreiber's testimony?

15      A.     Yes, I have.

16      Q.     And I take it you agree with them that  
17     there's no perfect market index methodology.  Right?

18      A.     I think that's correct.

19      Q.     Let me show you NewEnergy's response to  
20     ComEd Data Request Number 1 in the second set of  
21     requests that we sent to NEV.  The one to which I  
22     want to direct you is the response to Number 1.

1           A.     Okay.

2           MR. FEIN:  I just note for the record that this  
3     data request is not directed to the testimony of  
4     Mr. Kagan but refers to the testimony of  
5     Dr. O'Connor.

6           MR. FINDLAY:  Right.

7           MR. FEIN:  And Dr. Bramschreiber.

8           MR. FINDLAY:

9           Q.     You work for NewEnergy?

10          A.     Yes, I do.

11          Q.     You agree, as it states, that, and this is  
12     the end of the first paragraph, "NewEnergy  
13     recognizes that wholesale power and energy is sold  
14     in different ways as different products"?

15          A.     Where do you see that?

16          Q.     At the end of the first paragraph of the  
17     response.  Do you want me to --

18          A.     Yes, please.

19          Q.     -- show you?

20          A.     Yep.

21          Q.     It's right there.

22          A.     Thank you.

1           Q.     You agree with that statement, don't you,  
2     Mr. Kagan?

3           A.     Yes.

4           Q.     Let me ask you another sort of general  
5     question. In order to compare two prices, one of  
6     the things you need to do is to ensure that you're  
7     talking about apples -- comparing apples to apples  
8     and not apples to oranges. You've got to make sure  
9     that you're talking about the same product. Right?

10          A.     Sure.

11          Q.     In other words, to know if one price is  
12     better or worse than another, you would have to  
13     define the delivery point, the time frame, the terms  
14     of the offer, and the credit associated with those  
15     offers. Correct?

16          A.     Correct.

17          Q.     I'd like you to look at page 4 of your  
18     testimony, please. Starting at about line 11, you  
19     state that the values of such sales are different,  
20     and likely greater than, the value of day-ahead spot  
21     transactions reflected in the published daily  
22     indices used by the utilities, and in the previous

1 sentence "such sales" means sale of electric power  
2 and energy on a long or short-term firm basis (i.e.,  
3 one month or more). Is that what your testimony  
4 says?

5 A. Yes, it does.

6 Q. Now the term you use is likely greater  
7 than, isn't it?

8 A. Yes.

9 Q. And you have not submitted any analysis  
10 showing that the values for long-term or short-term  
11 firm sales are actually greater than the values for  
12 spot transactions, have you?

13 A. That's correct.

14 Q. In fact, we can agree, can't we, that on  
15 some days the spot prices are much higher than  
16 longer-term products, right?

17 A. I would agree, and I'm making no -- my  
18 testimony is not that the prices are greater or less  
19 than. I would agree that in many cases they could  
20 be. The spot could be greater than the long term  
21 for forward price or less than.

22 Q. Down at the bottom of that page, page 4 of

1 the testimony, starting on line 21, you say, "In  
2 other words, spot transactions are based on the  
3 incremental cost of generation, whereas longer-term  
4 transactions are based on the incremental cost of  
5 generation plus a contribution to fixed costs  
6 associated with maintaining the capacity to generate  
7 energy (i.e., electric power) and a margin." Is  
8 that right?

9 A. That's correct. That is my testimony.

10 Q. Now I think you've just said that's not  
11 always true; that spot prices sometimes will be much  
12 greater than incremental costs, right?

13 A. That's correct.

14 Q. And sometimes a long-term firm sale could  
15 be basically right at incremental cost or a little  
16 bit above. Right?

17 A. That's correct.

18 Q. And, in fact, in the Midwest last summer  
19 spot prices were hundreds of times the incremental  
20 cost of generation, weren't they?

21 A. Yes, they were.

22 Q. I'd like you to look at page 5 of your

1 testimony at the question that begins on line 11,  
2 and without reading the whole question, I take it  
3 that your point is that it's inappropriate to use  
4 day- ahead spot prices because the minimum period  
5 for which customers can shift from the utility until  
6 they have to come back is one month. Is that a fair  
7 characterization of what your point is there?

8 MR. FEIN: I'd just like to note for the record  
9 that this line of questioning that counsel is  
10 examining the witness upon is regarding off -peak  
11 forward prices, just so the record is clear.

12 Q. I think the question was whether that  
13 fairly stated your general point there.

14 A. Yes, it does.

15 Q. All right. And your point is basically a  
16 customer can't shift for a day, so you can't use a  
17 spot price that's only applicable for a day. Is  
18 that basically the point?

19 A. Yes, it is, and, moreover, when a supplier  
20 supplies that customer, they don't just supply that  
21 customer for a day. That customer is typically  
22 interested in being supplied for twelve months or



1 some reasonable period of time.

2 Q. Are you aware that as of the first of  
3 October, just a couple days ago, the minimum one -  
4 month requirement is no longer operative?

5 A. Yes, I heard that earlier today.

6 Q. And if there is no one-month requirement,  
7 then the portion of your testimony that depends on  
8 that requirement is also not operative. Is that  
9 correct?

10 A. No, that is not.

11 Q. All right. Well, let's leave aside for a  
12 minute that the premise -- that the one-month  
13 requirement isn't any longer operative. Let's  
14 assume it is still operative. Is it your testimony  
15 that the only transactions that one should examine  
16 in setting the market value are those that  
17 correspond to the period during which the customer  
18 is going to be gone?

19 A. No. I think that it would be reasonable  
20 to look at the market in which the utility sells and  
21 the customer within the service territory buys the  
22 product.

1           Q.     I mean it may be that if a customer is  
2 going away and it signs a letter saying, ComEd, I'm  
3 sick and tired of you, you will not see me for ten  
4 years, and it gets twelve bishops to swear to that,  
5 that ComEd might not be able to take that power and  
6 sell it at a ten-year transaction, right?

7           A.     That may be the case in an extreme  
8 example.

9           Q.     And ComEd may have to sell some of that  
10 freed-up power on the spot market.

11          A.     They may, in fact, have to do that.

12          Q.     At page 6 of your testimony, if you'll  
13 turn there now, you state, starting at line 20, that  
14 NewEnergy has not bought or been offered a standard  
15 5 x 8 off-peak wholesale monthly block, in the ComEd  
16 market, at anywhere near such a price, and the price  
17 to which you refer is \$11.17 per megawatt-hour. Do  
18 you see that?

19          A.     Yes.

20          Q.     I want to understand this. The price you  
21 said that you were not offered -- or the product --  
22 strike that.

1           The product for which you said you were  
2 not offered that price was for a September monthly  
3 off- peak forward. Was that for September 2000 or  
4 September 1999?

5           A.     That was September 1999.

6           Q.     And direct access did not begin until  
7 October 1999. Isn't that correct?

8           A.     That's correct.

9           Q.     Now is it correct that you've never bought  
10 a standard 5 x 8 wholesale block from ComEd at any  
11 price?

12          A.     Repeat the question.

13          Q.     Isn't it true that NewEnergy has never  
14 bought a standard 5 x 8 wholesale block from ComEd  
15 at any price?

16          MR. FEIN: I would object. It calls for  
17 confidential, proprietary information.

18          MR. FINDLAY: All right. We've signed a  
19 confidentiality agreement, so I guess we have to at  
20 this point clear the room of those who haven't  
21 signed an agreement as to NewEnergy's data.

22          EXAMINER JONES: Well, before we run people in

1 and out of the room a needless number of times, is  
2 this -- do you have other similar questions that  
3 will require clearing the room?

4 MR. FINDLAY: I don't believe that I do. I  
5 wouldn't want to make a representation that I don't  
6 have any more, but I must say that I wasn't sure  
7 that this would be confidential, but as I look down  
8 my list very quickly, I don't believe that there's  
9 anything else that's confidential. In fact, I think  
10 it's safe to say that that really is the only  
11 question. We can save it until the end, if you'd  
12 like.

13 EXAMINER JONES: Why don't we save it till the  
14 end, if that's not going to create problems with  
15 your questions.

16 MR. FINDLAY: Sure.

17 EXAMINER JONES: And if it does, let us know,  
18 and you can ask it sooner.

19 MR. FINDLAY: That's no problem. It's really a  
20 question that kind of hangs out there anyway.

21 Q. Mr. Kagan, you've done no analysis, have  
22 you, of how many standard 5 x 8 standard wholesale

1 blocks ComEd has offered to anyone?

2 A. No.

3 Q. Have you done any analysis of what  
4 percentage of power and energy in the Into ComEd hub  
5 is sold in standard 5 x 8 wholesale monthly blocks?

6 A. No.

7 Q. In fact, isn't it true that a very, very  
8 small percentage, less than 10 percent, of power and  
9 energy is sold in standard 5 x 8 wholesale monthly  
10 blocks?

11 MR. FEIN: Are you referring to in the industry  
12 as a whole? ComEd?

13 MR. FINDLAY: We can take it each part.

14 Q. In the industry as a whole.

15 A. Can you repeat the question with the more  
16 specific of what -- when you say percentage,  
17 percentage of what?

18 Q. I think I said isn't it true that less  
19 than 10 percent of power and energy is sold in  
20 standard 5 x 8 wholesale monthly blocks?

21 A. In the ComEd market?

22 Q. Let's do in the ComEd market.

1           A.     That's obviously a matter of record. I  
2     don't know what those numbers are. I don't have  
3     everybody's transaction.

4           Q.     You don't know the answer to that  
5     question. Right?

6           A.     That's correct.

7           Q.     Do you know the answer to that question  
8     nationally?

9           A.     No, I don't.

10          Q.     I think you said earlier that you can't  
11     compare prices in isolation without knowing all the  
12     attributes of the product at issue. Isn't that  
13     right? Products at issue I should say.

14          A.     I'd like to revise that testimony, what I  
15     had said earlier.

16          Q.     If you'd like to, go ahead.

17          A.     I think you have to take -- you can make a  
18     comparison. You just have to take into account the  
19     differences.

20          Q.     And one of the differences could be  
21     different credit ratings of different purchasers.  
22     Right?

1           A.     Yes.

2           Q.     And if one purchaser has a very poor  
3     credit rating, a seller might seek a higher price  
4     from that customer.  Correct?

5           A.     They may.

6           Q.     Do you know anything about NewEnergy's  
7     credit rating?

8           MR. FEIN:  Objection.  That's irrelevant.  It 's  
9     confidential.

10          MR. FINDLAY:  I'll tell you the relevance, Your  
11     Honor.  It is that Mr. Kagan has made a statement  
12     that they have never been offered a certain product  
13     at a particular price.  Mr. Kagan just said that one  
14     of the things that can affect the price is the  
15     creditworthiness of the buyer, and so I think  
16     whether or not NewEnergy is rated by agencies as  
17     having a poor credit rating or a fair credit rating  
18     is very relevant to whether or not this price can be  
19     compared to other prices.

20          MR. FEIN:  I still stand on both of the  
21     objections as to relevance and to information.

22          MR. FINDLAY:  As to the confidentiality, we're

1 happy to handle this one confidentially, but  
2 actually the data we're using is something that  
3 anyone can go on -- anyone can pick up from the  
4 major credit rating agencies. The offer of proof  
5 will be Dunn & Bradstreet and Experion, which are  
6 two credit agencies that anybody can go in and get  
7 this information from.

8 EXAMINER JONES: Well, if there's confidential  
9 -- or information that is alleged to be confidential  
10 involved, we'll hold off on this question until the  
11 end.

12 MR. FEIN: I think with that representation from  
13 Mr. Findlay, I think he can ask the question, if the  
14 witness knows the answer.

15 MR. FINDLAY:

16 Q. Do you know anything about NewEnergy's  
17 credit rating or AES's credit rating?

18 A. It's a matter of record.

19 Q. Would it surprise you if you learned that  
20 Dunn & Bradstreet gives NewEnergy a fair credit  
21 rating and states that "this credit rating was  
22 assigned because the payment information in D&B's



1 file on this company indicates slowness in meeting  
2 trade obligations and this company's number of years  
3 in business"?

4 A. And what is your question?

5 Q. Would it surprise you if you heard that?

6 A. If that's what you're telling me it says,  
7 then that's what it says.

8 Q. And I think we just agreed that a seller  
9 could take a credit rating in account in terms of  
10 setting the price to that purchaser. Right?

11 A. That's typically not the industry  
12 standard, the way things are done.

13 Q. That wasn't my question. My question is,  
14 a seller could take that into account in setting the  
15 price. Right?

16 A. Correct.

17 Q. Take a look at your testimony at page 7.  
18 Now you don't like the "Power Markets Week's" spot  
19 price as a measure of off-peak value, do you?

20 A. Can you be more clear with that question?

21 Q. Sure. You think that the "Power Market  
22 Week's" reported spot transactions are not by

1 themselves appropriate to set the off-peak price of  
2 power and energy. Correct?

3 A. For the market value index.

4 Q. Right.

5 A. Correct.

6 Q. And the way in which you propose to deal  
7 with your concern is to add a premium to the "Power  
8 Market Week's" spot price. That's what you're  
9 talking about at page 7 of your testimony. Right?

10 A. Correct.

11 Q. Now you don't propose to deal with your  
12 concern by collecting a bunch of transactions and  
13 then actually setting the off-peak price based on  
14 those transactions, do you?

15 A. Can you ask that a different way, please?

16 Q. Sure. What you propose to do is to  
17 collect from brokers information and then use that  
18 to determine the premium to be added to the "Power  
19 Markets Week" number. Correct?

20 A. No, that is not correct.

21 Q. Take a look at line 18 at page 7, the  
22 paragraph that begins there, and you state,

1 "NewEnergy proposes that a premium reflecting this  
2 power or capacity value be calculated through the  
3 broker market. This would be done by gathering  
4 broker quotes for round-the-clock power and energy,  
5 as well as quotes for 5 x 16 on-peak power and  
6 energy blocks." So isn't it fair to say that you  
7 are using broker quotes to determine a premium for  
8 power or capacity that would be added to the "Power  
9 Markets Week" spot price?

10 A. Let me try to clarify my testimony.

11 Q. Sure.

12 A. I have concerns about the "Power Markets  
13 Week's Daily Price Report" as relevant to the market  
14 value index. When I describe a premium, I'm not  
15 describing to add -- to calculate a premium and then  
16 add it to the "Power Market Week's Daily Price  
17 Report". I apologize if that's not clear. I'm  
18 advocating another market value indicator which is  
19 going to the broker market, looking for  
20 round-the-clock power and energy, and then backing  
21 out the on-peak, which is also a liquid product.

22 Q. All right. That is very helpful. I don't

1 mean this as a criticism. The word premium is  
2 really not quite right there. Correct?

3 A. I would agree that that could be clearer,  
4 yes.

5 Q. Okay.

6 A. Thank you.

7 Q. Now it sounds to me like the method that  
8 you propose sounds a lot like how the NFF has been  
9 doing it the last couple years; collecting a bunch  
10 of transactions, excluding some, and then  
11 determining a market value. Isn't that correct?

12 MR. FEIN: Objection to what the NFF report  
13 reviews, how it reviews wholesale transactions. I  
14 don't understand the question.

15 Q. Do you understand the question?

16 A. Why don't you try it a different way.

17 Q. All right. In your -- do you know  
18 anything about the NFF?

19 A. I'm aware of that process.

20 Q. Isn't it true that the way the NFF works  
21 is to collect a number of transactions, determine  
22 which ones of them seem most appropriate, and then

1 determine the market value from those transactions?

2 A. Generally that's my understanding of how  
3 the NFF process works.

4 Q. And the NFF process collects these  
5 transactions from broker quotes.

6 A. I'm not sure of the source of those.

7 Q. All right. Now, your testimony does not  
8 specify which brokers would be contacted, does it?

9 A. No, it does not.

10 Q. It doesn't tell the Commission who would  
11 contact the brokers, does it?

12 A. No. We could discuss that further.

13 Q. It doesn't predict how many brokers would  
14 respond and tell the details of the transactions,  
15 does it?

16 A. No, it does not.

17 Q. And your testimony also doesn't provide  
18 any guidance to the Commission as to how to exclude  
19 particular transactions that are not appropriate.

20 A. No, it does not.

21 Q. At page 10 of your testimony you discuss  
22 what you call load variability insurance. Is that

1 right?

2 A. Yes.

3 Q. And it's your contention that there should  
4 be added to the price for power and energy the cost  
5 of load variability insurance. Correct?

6 A. Correct.

7 Q. And that's because, I think you say, this  
8 is a real cost for an ARES like NewEnergy. It's  
9 something that you actually have to buy in order to  
10 serve your customers.

11 A. Correct. It's a real cost to serve retail  
12 full requirements customers.

13 Q. And I think here you are actually talking  
14 about an adder for the cost. You try and value an  
15 option, and that would be an adder. Before we  
16 stumbled over premium, but here it is a premium or  
17 an adder, something that you would add on to the --

18 A. It's part of the buildup of serving a full  
19 requirements customer where we started in this  
20 market index by looking at blocks and then made  
21 adjustments for shaping and then made adjustments  
22 for the fact that retail load can vary, so there was

1 a buildup. It was part of a buildup.

2 Q. Right. It's an adjustment I guess is  
3 another way to put it.

4 A. Fair.

5 Q. Okay. Now, we can agree, can't we, that  
6 when ComEd goes out to sell freed-up power, it  
7 doesn't always obtain extra money for load  
8 variability insurance when it sells the freed-up  
9 power and energy, does it?

10 A. I'm not aware of ComEd's marketing  
11 activities, but it could very well or it may not.

12 Q. But in your experience, it's quite  
13 possible for products involving electricity to be  
14 sold without load variability insurance at the  
15 wholesale level, right?

16 A. If ComEd decides not to sell all the  
17 products that they have at their disposal, then that  
18 may be.

19 Q. And not all of ComEd's buyers want load  
20 variability insurance, do they?

21 A. I'm not -- I don't have any knowledge of  
22 what ComEd sells -- what they want to sell or who

1 they actually sell to on any given --

2 Q. What about more generally? I mean does  
3 every single purchase of a product involving  
4 electricity include load variability insurance? The  
5 answer is no, right?

6 A. Ask the question again.

7 Q. Does every single product that packages  
8 electricity one way or the other involve -- also --  
9 excuse me. Let me start over.

10 Does every single product that involves  
11 electricity also include load variability insurance?  
12 For example, spot sales do not, do they?

13 A. Correct.

14 Q. And to value load variability insurance  
15 you propose to use Black's Model. Is that right?

16 A. That's one proposal. There are several  
17 proposals and several different types of models that  
18 exist throughout the industry, some proprietary,  
19 some not. Where I made one simple suggestion, we're  
20 open to a number of different types of  
21 methodologies.

22 Q. All right. So it's now your position that



1 Black's Model may not necessarily be the most  
2 appropriate model to use.

3 MR. FEIN: Objection. I object to counsel's  
4 characterization.

5 MR. FINDLAY: The witness can disagree with it.

6 Q. It's now your testimony --

7 EXAMINER JONES: Well, wait a minute now.

8 MR. FINDLAY: Oh, I'm sorry. Okay.

9 EXAMINER JONES: I agree with your response, but  
10 still.

11 MR. FINDLAY: Sorry. I'm sorry.

12 EXAMINER JONES: I think the objection should be  
13 and is hereby overruled. The witness can disagree  
14 with the cross-examination question if he doesn't  
15 agree with it.

16 Do you need it read back?

17 THE WITNESS: Please. Thank you.

18 MR. FINDLAY: I'll try it again.

19 Q. It's now your testimony that Black's Model  
20 may not necessarily be the best model to determine  
21 the cost of load variability insurance. Correct?

22 MR. FEIN: I still have the objection. It's a

1 mischaracterization of his testimony. The witness  
2 said that there are other methods available. I  
3 don't think he said that it's not the best method.  
4 He said there's other methods available.

5 MR. FINDLAY: If I could just respond, Mr. Fein  
6 is coaching the witness.

7 MR. FEIN: I'm not coaching the witness. He  
8 mischaracterized his testimony.

9 MR. FINDLAY: The witness is perfectly able to  
10 say the answer is no.

11 EXAMINER JONES: Well, the arguments are  
12 concluded. The objection is overruled. The witness  
13 is not limited to a yes or no answer as long as the  
14 answer is responsive to the question. It is cross.  
15 This is cross-examination. It's an appropriate  
16 question on cross.

17 Mr. Kagan.

18 A. My testimony is that the Black's Model is  
19 one approach, and there are other approaches that  
20 are available and relevant.

21 Q. And you've made no judgment as to which of  
22 these several approaches is the most appropriate.

1           A.     No, I haven't.

2           Q.     In your proposed application of Black's  
3     Model, do you propose to estimate load variability  
4     going forward using historical customer load data?

5           A.     I think that would be a reasonable  
6     starting place. I'd be open to considering -- also  
7     taking into account some estimate of future  
8     variability as well.

9           Q.     So the answer was yes, that's what you  
10    proposed, was to estimate load variability going  
11    forward using historical customer load data. That's  
12    what you've proposed so far.

13          A.     Yes, it is.

14          Q.     Now at page 12 of your testimony you  
15    propose to take the option value that is spit out by  
16    Black's Model -- that's a bad word; I don't mean  
17    that in the pejorative -- that results from Black's  
18    Model, and you propose to adjust it downward by 25  
19    to 50 percent. Is that correct?

20          A.     Correct.

21          Q.     And we talked earlier that we asked for  
22    all your workpapers and relied-upon documents for

1 your testimony. You didn't give us any, so I take  
2 it that you didn't provide any calculations as to  
3 that 25 or 50 percent, did you?

4 A. The reason I didn't provide workpapers is  
5 this is something that I deal with day in, day out.  
6 This concept, in general, is part of my everyday  
7 work and part of many of our counterparties'  
8 everyday work and is discussed in my office every  
9 day, and I can explain, if you'd like, where I came  
10 up with the 25 or 50 percent deduct, if you would  
11 like.

12 Q. Well, your counsel will be able to ask you  
13 on redirect, but I guess I'll just ask you, you  
14 haven't in your testimony given the Commission any  
15 guidance as to whether this proposed deduction ought  
16 to be 25 or 50 percent at either end of the  
17 spectrum, have you?

18 A. I have not. I would be happy to do that.

19 Q. Let me just turn to pages 13 to 14 of your  
20 testimony, and we're nearing the end before we get  
21 into those last couple confidential questions.

22 A. Excuse me. Which page?

1 Q. I'm sorry; pages 13 to 14.

2 A. Okay.

3 Q. And it's the example that you give there.

4 A. Yes.

5 Q. Now, this is for illustrative purposes  
6 only, isn't it?

7 A. Correct.

8 Q. And the assumptions here are not based on  
9 any actual broker's quotes. Right?

10 A. Correct.

11 Q. And so these are basically assumptions  
12 that you've made.

13 A. Correct. These are, as you had said, for  
14 illustration purposes only.

15 MR. FINDLAY: That's all I have that's not  
16 confidential, and then I just have a couple, maybe  
17 two or three questions that would be confidential,  
18 actually just one question.

19 EXAMINER JONES: All right. It looks like we're  
20 going to need to go back in camera. We apologize  
21 for the inconvenience.

22 MS. READ: Your Honor, just a minute. It may

1 not be necessary.

2 EXAMINER JONES: Just a minute before you leave.  
3 We'll see if you really need to leave. Off the  
4 record.

5 (Whereupon at this point in  
6 the proceedings an  
7 off-the-record discussion  
8 transpired.)

9 EXAMINER JONES: Back on the record.  
10 Do you want to repeat what you just said  
11 for the record?

12 MR. FINDLAY: Sure. Upon further reflection,  
13 we've decided that we ought to ask this question of  
14 a different witness, and so there's no need to ask  
15 it of Mr. Kagan.

16 EXAMINER JONES: All right. Thank you.

17 All right. Let's make sure that everyone  
18 is here that wants to be.

19 (Pause in the proceedings.)

20 I believe Mr. Findlay was the only one  
21 with cross-examination of Mr. Kagan. Do any other  
22 parties have cross? They do not.

1                   Is there redirect, Mr. Fein?

2           MR. FEIN:   There likely will be some redirect.

3   Can we have a few minutes?

4           EXAMINER JONES:   Yes.   How long do you need?

5           MR. FEIN:   Five to ten minutes would be  
6   sufficient.

7           EXAMINER JONES:   All right.   Do you want ten?

8           MR. FEIN:   Please.   Thanks.

9           EXAMINER JONES:   All right.   We hereby recess  
10   for ten minutes.

11                               (Whereupon a short recess was  
12                               taken.)

13           EXAMINER JONES:   Back on the record.

14                   Mr. Fein, do you have any  
15   cross-examination for your witness?

16           MR. FEIN:   Redirect.

17           EXAMINER JONES:   Or I'm sorry; redirect.

18   Redirect examination?   I stand corrected.

19                               REDIRECT EXAMINATION

20           BY MR. FEIN:

21           Q.     Mr. Kagan, is it accurate to characterize  
22   your office as an exchange?

1           A.     No.

2           Q.     How would you characterize your office?

3           A.     As I said earlier, our office is a  
4     marketing operation as compared to an exchange. In  
5     an exchange there are many counterparties that come  
6     together to transact. In our office everybody is  
7     part of the same company, and the goal is to procure  
8     energy to serve our retail customers.

9           Q.     And I believe you also testified that any  
10    of the authorized traders may be able to manipulate  
11    electric prices under very specific circumstances I  
12    believe was your testimony. Do you recall that?

13          A.     Yes.

14          Q.     What are those circumstances?

15          A.     I would say generally the circumstances  
16    are intent or the conditions require intent to  
17    manipulate, capital, and some consideration of the  
18    size of the market in which we're referring to.

19          Q.     Now do you also recall being presented  
20    with a document that was a printout from a page on  
21    NewEnergy's website?

22          A.     Yes, I do.



1           Q.     And do you recall being asked questions by  
2     counsel regarding whether NewEnergy buys and sells  
3     electricity?

4           A.     Yes.

5           Q.     To the best of your knowledge, does  
6     NewEnergy sell electricity in the Into ComEd market?

7           A.     NewEnergy has sold electricity in the Into  
8     ComEd market, yes.

9           Q.     Now do you recall being asked questions by  
10    Mr. Findlay regarding the possibility that spot  
11    market prices could be higher than long-term prices?  
12    Do you recall that line of questioning?

13          A.     Yes.

14          Q.     When do spot market prices generally  
15    increase?

16          A.     Generally during times of high demand.

17          Q.     Do those price increases generally occur  
18    in the off-peak market as well?

19          A.     Generally during the off-peak we do not  
20    see large price increases.

21          Q.     I believe Mr. Findlay referenced a \$6,000  
22    per hour price in the summer of '99?

1 MR. FINDLAY: I didn't actually.

2 MR. FEIN: I withdraw the question.

3 Q. Mr. Findlay also asked you a number of  
4 questions regarding Commonwealth Edison's ability to  
5 sell electricity freed up by a customer's selection  
6 of an ARES. Do you remember that line of  
7 questioning?

8 A. Yes.

9 Q. Have you ever conducted trading on  
10 Commonwealth Edison's behalf?

11 A. No.

12 Q. Do you know anything about the specifics  
13 of their trading operation?

14 A. No, I do not.

15 Q. Mr. Findlay also asked you some questions  
16 regarding any analysis that you had done of the  
17 standard 5 x 8 off-peak wholesale monthly blocks.  
18 Do you remember that line of questioning?

19 A. Yes.

20 Q. And I believe your testimony was that you  
21 had not done so. Is that correct?

22 A. That's correct.

1 Q. Could you tell us why you have not done  
2 so?

3 A. That wasn't what I was asked to address in  
4 this proceeding.

5 Q. Do you also recall some questions from  
6 Mr. Findlay regarding the issue of credit risk,  
7 specifically credit rating regarding NewEnergy?

8 A. Yes.

9 Q. To the best of your knowledge, has the  
10 company ever stated that it failed to sell power to  
11 NewEnergy due to NewEnergy's credit rating?

12 MR. FINDLAY: Objection. You said a company?

13 MR. FEIN: No.

14 MS. HEXTELL: He said the company.

15 MR. FINDLAY: Oh, the company.

16 MR. FEIN: The company.

17 MS. READ: Would you mind reading that question  
18 back again? I'm sorry.

19 (Whereupon the requested  
20 portion of the record was read  
21 back by the Court Reporter.)

22 MR. FINDLAY: I object as to relevance. It's

1 not what the company states is at issue here. It's  
2 what the company decided internally as to pricing.

3 MR. FEIN: Counsel opened the door to this. His  
4 question in his cross-examination specifically  
5 related to NewEnergy's credit rating, and he made an  
6 argument before Your Honor regarding how that is a  
7 factor that goes into the pricing.

8 EXAMINER JONES: I'll allow the question. It's  
9 kind of a close call, but I think a sufficient link  
10 has been made to cross. So you may answer that. Do  
11 you need it read back?

12 THE WITNESS: Please.

13 (Whereupon the requested  
14 portion of the record was read  
15 back by the Court Reporter.)

16 A. No, I'm not aware of that.

17 Q. Are you aware whether or not there are  
18 ongoing credit arrangements between NewEnergy and  
19 Commonwealth Edison Company?

20 A. Yes, I am aware there are.

21 Q. Now Mr. Findlay also implied that price  
22 adjustments are a reasonable way to address credit

1 concerns. Do you recall that question?

2 A. Yes.

3 MR. FINDLAY: Objection. It was not that I  
4 stated. It was that the witness agreed that credit  
5 was taken into account in pricing.

6 MR. FEIN: Well, let me ask the question to  
7 Mr. Kagan.

8 Q. Mr. Kagan, what is your understanding of  
9 the industry practice regarding the issue of credit  
10 concerns?

11 A. In general, credit is addressed by posting  
12 collateral and reviewing the credit rating of the  
13 counterparty as opposed to adjusting the price at  
14 which one party will buy from another or sell.

15 Q. Your proposal to the Commission regarding  
16 the use of broker quotes, do you recall the line of  
17 questioning regarding that issue?

18 A. Yes.

19 Q. Was your intent to present a formal  
20 proposal or were you merely offering an alternative  
21 to the Commission?

22 A. I was offering an alternative.

1 MS. READ: Could I ask that that question and  
2 answer be read back, please?

3 MR. FEIN: I'm sorry?

4 MS. READ: I'm asking the Court Reporter to  
5 please read that question and answer back.

6 MR. FEIN: I couldn't hear you.

7 MS. READ: Sorry.

8 (Whereupon the requested  
9 portion of the record was read  
10 back by the Court Reporter.)

11 MS. READ: Thank you.

12 MR. FEIN:

13 Q. Mr. Kagan, was it ever your testimony that  
14 Black's Model is the best model to be used for  
15 uncertainties of price and load?

16 A. No. My testimony was that Black's Model  
17 was one method which is widely used, but there are  
18 several other methods which are acceptable and used  
19 in the industry.

20 Q. Do you also recall being asked a series of  
21 questions regarding the difference between the  
22 broker quote process as it related to the NFF

1 process?

2 A. Yes.

3 Q. Could you please explain what you  
4 understand the difference to be between the NFF  
5 process and the broker quote process that's  
6 described in your testimony?

7 A. My understanding is that the NFF process  
8 looks at contracts, and my general understanding is  
9 that those contracts are typically of a longer term  
10 and a more structured nature than the broker quote  
11 approach that I alluded to in my testimony.

12 Q. The contracts that the NFF process  
13 reviews, who are the parties to those contracts that  
14 are being reviewed by the Neutral Fact Finder, to  
15 the best of your knowledge?

16 A. It would only be speculation on my part.  
17 I would assume that it's utilities and marketers,  
18 but it's a matter of record there.

19 MR. FINDLAY: I ask that the question be  
20 stricken. The witness said it would only be  
21 speculation on his part. The response; pardon me;  
22 that the response be stricken. The witness doesn't

1 have any knowledge of this.

2 EXAMINER JONES: Any response?

3 MR. FEIN: The witness gave his best answer that  
4 he could to my question, and he qualified it.

5 EXAMINER JONES: We'll leave it in.

6 MR. FEIN: No further redirect.

7 EXAMINER JONES: Okay. Any recross?

8 RECROSS EXAMINATION

9 BY MR. FINDLAY:

10 Q. Mr. Fein asked you some questions about  
11 the spot price and long-term contracts. Do you  
12 recall those questions?

13 A. Yes.

14 Q. And I think you said that generally in  
15 off-peak periods, long-term prices would be above  
16 the spot price. Correct?

17 A. I did say that. That relationship is by  
18 no means required, and it could be one way or the  
19 other. It's completely indeterminate which way,  
20 whether spot prices are greater than or less than  
21 future prices.

22 Q. And that's true both off-peak and on-



1 peak.

2 A. Yes.

3 Q. Mr. Fein asked you about whether the  
4 company, meaning ComEd, had ever told NewEnergy  
5 about credit concerns. Do you recall that question?

6 A. Yes.

7 Q. And you said you did not have knowledge as  
8 to any such statements by ComEd. Remember? Is that  
9 correct?

10 A. Correct, yes.

11 Q. But, in fact, you're not the person  
12 trading --

13 MR. FEIN: I'm going to enter an objection.  
14 Counsel has mischaracterized the question that I  
15 asked. The question was, to the best of your  
16 knowledge, has the company ever refused to sell  
17 power as a result of credit concerns.

18 MR. FINDLAY: All right. I take the correction.

19 Q. Mr. Fein asked you whether ComEd had ever  
20 told NewEnergy that it would refuse to sell it power  
21 as a result of credit concerns. Correct?

22 A. I'm unaware that that situation happened.

1 It easily could have.

2 Q. And that question and your response does  
3 not go to whether ComEd adjusted the price one way  
4 or the other based on credit concerns. Correct?

5 A. Correct. It's historically whether ComEd  
6 said they were unwilling to trade with NewEnergy in  
7 a specific time frame or transaction because of  
8 credit.

9 Q. It's a refusal to trade period, not a  
10 refusal to sell at a particular price. Right?

11 A. A counterparty can either refuse to trade  
12 period or can refuse certain trades that are of  
13 certain durations, or in extremely volatile periods  
14 they may agree not to trade.

15 Q. But your response was as to ComEd and  
16 NewEnergy, and your response said nothing about  
17 price. It only was a refusal to sell. Let's be  
18 very precise about this. That's what Mr. Fein just  
19 corrected me on.

20 A. Ask the question again, because you want  
21 to be very precise.

22 Q. Right.

1           A.     So I want to listen to the question again.

2           Q.     When Mr. Fein asked you about ComEd's  
3     statements to NewEnergy relating to NewEnergy's  
4     credit, the question and the answer were both  
5     directed toward ComEd saying that it would not sell  
6     to NewEnergy, not that ComEd would sell or not sell  
7     at a particular price. Right?

8           A.     Correct.

9           Q.     You said that one way in the industry that  
10    credit concerns are dealt with is through  
11    collateral?

12          A.     Correct.

13          Q.     Do you know, sitting here today, whether  
14    ComEd has ever asked NewEnergy to post collateral  
15    for any transaction?

16          A.     Yes. ComEd has asked NewEnergy to post  
17    collateral.

18          Q.     And has NewEnergy been willing to do that?

19          A.     Yes.

20          Q.     What collateral have they posted?

21          A.     I do not know the details of our credit  
22    posted with each counterparty, but it's -- subject

1 to counsel, it's something that we could make  
2 available of what we post with ComEd.

3 Q. And your statement in your testimony about  
4 NewEnergy never being offered a particular product,  
5 those were not offers that required the posting of  
6 collateral, were they?

7 MR. FEIN: Counsel, can you direct me to where  
8 you're referring to in his testimony?

9 MR. FINDLAY: The testimony that ComEd has never  
10 offered NewEnergy a standard 5 x 8 wholesale block  
11 at the level of the off-peak price.

12 MR. FEIN: At the \$11.17 price that's referenced  
13 on page 6 of his testimony.

14 MR. FINDLAY: Yeah.

15 MR. FEIN: Just so we're clear.

16 MR. FINDLAY: Yes.

17 A. So is there a question?

18 Q. Yeah, there was a question.

19 A. Okay.

20 Q. Let me try it, if I can, again. Mr. Fein  
21 succeeded in completely eliminating it from my  
22 memory.

1 MR. FEIN: That was not Mr. Fein's intent.

2 MR. FINDLAY: I know. I know it wasn't.

3 Q. When you said that ComEd had never offered  
4 NewEnergy such a price, you don't know whether  
5 ComEd's offers included collateral or didn't include  
6 collateral for that product, do you?

7 A. Collateral considerations?

8 Q. Yes.

9 A. That the reason for not offering --

10 Q. Right.

11 A. -- was because of insufficient collateral,  
12 for example. No. Of course, I wouldn't know that.  
13 That's an internal ComEd decision.

14 MR. FINDLAY: I think that's all I've got.

15 EXAMINER JONES: Any re-redirect?

16 MR. FEIN: No, Your Honor.

17 EXAMINER JONES: All right. That completes the  
18 questions for Mr. Kagan. Thank you, sir.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 EXAMINER JONES: Let's see. Off the record  
22 regarding scheduling.

1 (Whereupon at this point in  
2 the proceedings an  
3 off-the-record discussion  
4 transpired.)

5 EXAMINER JONES: All right. Back on the record.

6 We'll break at this time for lunch until  
7 2:00 P.M.

8 (Whereupon lunch recess was  
9 taken until 2:00 P.M.)

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1                   A F T E R N O O N   S E S S I O N

2                               (Whereupon the proceedings were  
3                               hereinafter stenographically  
4                               reported by Carla Boehl.)

5                   EXAMINER JONES:   Back on the record.   Does  
6   NewEnergy call some witnesses?

7                   MR. FEIN:   Yes, NewEnergy would call the  
8   panel testimony of Doctor Philip R. O'Connor and Tom  
9   Bramschreiber.

10                               (Whereupon the Witnesses were  
11                               duly sworn by Examiner  
12                               Jones.)

13                   P H I L I P   R.   O ' C O N N O R,   P h. D.  
14                               and

15                   T H O M A S   F.   B R A M S C H R E I B E R  
16   called as witnesses on behalf of NewEnergy Midwest,  
17   L.L.C., having been first duly sworn, was examined and  
18   testified as follows:

19                               DIRECT EXAMINATION

20                   BY MR. FEIN:

21                   Q.   Doctor O'Connor, could you please state  
22   your name, spelling your last name for the record.

1           A. (Dr. O'Connor) My name is Philip, one L,  
2           R. O'Connor, O'C-O-N-N-O-R.

3           Q. By whom are you employed?

4           A. (Dr. O'Connor) By NewEnergy Midwest,  
5           L.L.C.

6           Q. Mr. Bramschreiber, could you please state  
7           your name and spell your last name for the court  
8           reporter, please.

9           A. (Mr. Bramschreiber) My full name is  
10          Thomas F. Bramschreiber. The last name is spelled  
11          B-R-A-M-S-C-H-R-E-I-B-E-R.

12          Q. And by whom are you employed,  
13          Mr. Bramschreiber?

14          A. (Mr. Bramschreiber) NewEnergy Midwest,  
15          L.L.C.

16          Q. Gentlemen, do you have three documents in  
17          front of you, the first labeled the "Joint Direct  
18          Testimony of Philip R. O'Connor and Thomas  
19          Bramschreiber on behalf of NewEnergy Midwest, L.L.C."?

20          A. (Mr. Bramschreiber) Yes.

21          A. (Dr. O'Connor) Yes.

22          Q. Do you also have a second document before



1       you that's labeled the "Joint Rebuttal Testimony of  
2       Philip R. O'Connor and Thomas Bramschreiber"?

3               A.   (Mr. Bramschreiber)   Yes.

4               A.   (Dr. O'Connor)   Yes.

5               Q.   Do you have a third piece of testimony  
6       that's been marked the "Surrebuttal Testimony of  
7       Philip R. O'Connor and Tom Bramschreiber"?

8               A.   (Mr. Bramschreiber)   Yes.

9               A.   (Dr. O'Connor)   Yes.

10              Q.   And these documents have been previously  
11       marked as NewEnergy Exhibits 1, 2 and 3, respectively.  
12       Were each of these documents prepared by both of you  
13       or under your direction and supervision?

14              A.   (Mr. Bramschreiber)   Yes.

15              A.   (Dr. O'Connor)   Yes.

16              Q.   Do you have any changes or corrections to  
17       the joint direct testimony that has been submitted by  
18       both of you in this proceeding?

19              A.   (Mr. Bramschreiber)   Yes, we do.

20              Q.   And could you please explain where those  
21       changes occur?

22              A.   (Mr. Bramschreiber)   What's been labeled

1 page 1, line 3, the location of our office has  
2 changed. It is now 309 West Washington, Suite 1100.  
3 The zipcode is now 60606.

4 In addition, on page 3, line 6, it should  
5 say to 1998, not 1999.

6 On page 3, line 19, where it refers to  
7 the section, there is an extra one in there. It  
8 should be Section 16-112.

9 Page 4, line 13, the word "can" and "not"  
10 should be a single word, "cannot."

11 On page 7, line 4 --

12 MS. READ: Excuse me, I couldn't find that  
13 last one. Could you go over it again?

14 MR. BRAMSCHREIBER: Line 13, page 4. It says  
15 "Electricity market can not" and "cannot" should be a  
16 single word, according to Phil.

17 Page 7, line 4, same correction as  
18 before, the reference to the Act should be 16-112,  
19 there is an extra one in there.

20 And again page 9, line 12, the same  
21 correction. It references Section 116. That really  
22 should be just 16 of the Act. And that was it in the

1 direct testimony.

2 MR. FEIN:

3 Q. If you were asked these same questions  
4 that were contained in the joint direct testimony,  
5 would your answers be the same today?

6 A. (Mr. Bramschreiber) Yes.

7 A. (Dr. O'Connor) Yes.

8 Q. Do you have any changes or corrections to  
9 the joint rebuttal testimony that you are offering in  
10 this proceeding?

11 A. (Mr. Bramschreiber) No, we do not.

12 Q. If you were asked the same questions  
13 contained in the joint rebuttal testimony, would your  
14 answers be the same today?

15 A. (Mr. Bramschreiber) Yes, they would.

16 Q. Regarding the joint surrebuttal  
17 testimony, do you have any corrections or changes to  
18 that piece of prefiled testimony in this proceeding?

19 A. (Mr. Bramschreiber) Yes, we do.

20 Q. And could you please explain what those  
21 changes are?

22 A. (Mr. Bramschreiber) On page 5 of the

1 joint surrebuttal, line 5, there is a comma between  
2 the word "risk" and "from" that should not be  
3 included.

4                   And, in addition, what was attached as  
5 Exhibit PRO-8 included some numbers in the lower  
6 right-hand corner that were not referenced in the  
7 testimony but we still would like to correct those.  
8 The smaller of the two boxes where it says this is  
9 PRO-8, the attached exhibit, Table 1 of 2, within the  
10 box the number currently says 17.181; that should be  
11 15.619. The box beneath it the number appears as  
12 currently 171.81; it should be 156.19. And two lines  
13 below that in the same box a percentage shows up  
14 currently at 13.54; that number should be 4.13  
15 percent.

16                   And on Table 2 of 2 of PRO-8 a similar  
17 type correction, though not referenced in the  
18 testimony, the number in these two boxes should read  
19 in the top box, instead of 14.001, it should be  
20 15.556. The box below it where it currently says  
21 140.01 should read 155.56. And the percent two lines  
22 down which I believe is negative 6.66 percent should

1 read 3.71 percent. And that was it in the joint  
2 surrebuttal testimony.

3 Q. With those corrections, if you were asked  
4 the questions that are contained in the joint  
5 surrebuttal testimony, would your answers be the same  
6 today?

7 A. (Mr. Bramschreiber) Yes, they would.

8 MR. FEIN: I would note for the record that  
9 the corrected copies of the direct and the surrebuttal  
10 testimonies have been provided to the court reporter  
11 and the Examiner. With those changes we would move  
12 for the admission of NewEnergy Exhibit 1, the joint  
13 direct testimony; NewEnergy Exhibit 2, the joint  
14 rebuttal testimony; and NewEnergy Exhibit 3, the joint  
15 surrebuttal testimony of Philip R. O'Connor and Thomas  
16 Bramschreiber and tender the witnesses for cross  
17 examination.

18 EXAMINER JONES: Any response? There is  
19 none. Those three exhibits are admitted into evidence  
20 at this time, being NewEnergy Exhibits 1, 2 and 3.

21 (Whereupon NewEnergy Exhibits 1,  
22 2 and 3 were admitted into

1 evidence.)

2 EXAMINER JONES: Just a quick question.  
3 Those corrections in the tables in the attachment to  
4 the surrebuttal, did you say those have been made in  
5 the copy given to the court reporter?

6 MR. FEIN: Yes, they have, at least that was  
7 my understanding.

8 EXAMINER JONES: Could you just double check  
9 that? You don't need to do it now but just sometime  
10 before the close of the hearing today just to make  
11 sure that the copy with the court reporter's  
12 identification on it is what you want it to say.

13 MR. FEIN: Thank you.

14 EXAMINER JONES: All right. I think several  
15 parties have some cross examination questions. Who  
16 wants to lead off?

17 MS. READ: I can.

18 EXAMINER JONES: All right, Ms. Read.

19 CROSS EXAMINATION

20 BY MS. READ:

21 Q. Good afternoon, Doctor O'Connor and  
22 Mr. Bramschreiber. I do have some questions that

1 touch on confidential data, and I am going to try to  
2 save those for the end and let you know when I think  
3 they are coming up. If there is something that I  
4 inadvertently refer to before that time that's  
5 confidential, just let me know.

6 A. (Dr. O'Connor) I hope you return the  
7 favor to us if we accidentally spill the beans on  
8 something that is confidential.

9 Q. I won't spill the beans. I will ask and  
10 I hope that your answers don't include confidential  
11 data. I think we talked yesterday a little bit about  
12 the panel rules. I am going to ask a question,  
13 whichever one of you wants to answer it, go ahead.  
14 And if it's an answer that you both need to respond  
15 to, let me know.

16 Would you accept a definition of  
17 "customer" as a person or entity that buys products or  
18 services?

19 A. (Dr. O'Connor) Yes.

20 Q. And is it correct that alternative retail  
21 electric suppliers in Illinois can purchase goods or  
22 services from utilities?

1           A. (Dr. O'Connor) Yes.

2           Q. And would you agree that the Public  
3     Utilities Act recognizes that alternative retail  
4     electric suppliers can purchase such products and  
5     services from utilities?

6           A. (Dr. O'Connor) Yes, it's clear that ARES  
7     can purchase power and so forth from utilities, yes.

8           Q. A retail customer is a defined term in  
9     Section 16-102 of the Public Utilities Act; is that  
10    correct?

11          A. (Dr. O'Connor) I believe so, yes.

12          Q. "Retail customer" is not a term that's  
13    used in Section 16-112(a) of the Act, correct?

14          A. (Dr. O'Connor) The word "customer" is  
15    not used; that's right.

16          Q. Is NewEnergy a customer of ComEd's?

17          A. (Dr. O'Connor) Yes, we are.

18          Q. If you would look at your direct, page 8,  
19    line 15, are you using the term "retail customers"  
20    there as it is defined in the Act?

21          A. (Dr. O'Connor) Unfortunately, Sarah, my  
22    copy's not lined. Is this the --



1           Q. I'm sorry. I will give you a lined copy,  
2 if that helps. Let me just do that for all your  
3 testimonies.

4           A. (Dr. O'Connor) Okay. That was line 15?

5           Q. Yeah.

6           A. (Dr. O'Connor) And that line reading  
7 "Retail customers buy retail power and energy that  
8 varies in price and quantity by hour, not fixed  
9 standard wholesale bulk blocks"?

10          Q. Yes.

11          A. That would cover the scope of retail  
12 customers, people who are end-users of power.

13          Q. Same on line 19?

14          A. (Dr. O'Connor) Yes, and we distinguish  
15 other retail customers from street lighting customers,  
16 yes.

17          Q. On page 10, line 3 and 4, your statement,  
18 "It's a simple fact that retail customers buy retail  
19 power and energy that varies by the hour," are you  
20 using "retail customers" as defined in the Act?

21          A. (Dr. O'Connor) Largely so, I'm sure,  
22 yes.

1           Q. Do you think that's generally true  
2 throughout your testimony?

3           A. (Dr. O'Connor) When we are referring to  
4 "retail customers" in the testimony, do we mean there  
5 is a great deal of overlap between that and the  
6 definition of 102? I would think so, yes.

7           Q. Now, look at your statement on page 8,  
8 line 15.

9           A. (Dr. O'Connor) Line 15, okay.

10          Q. Is it your testimony that retail  
11 customers buy power and energy at a price that varies  
12 by the hour?

13          A. (Dr. O'Connor) As you can see in that  
14 sentence, we are distinguishing it from wholesale bulk  
15 blocks. If you are asking me if the end-use retail  
16 price itself varies, in most cases not.

17          Q. And that's true whether it's sold by the  
18 utility or sold by an alternative retail electric  
19 supplier; generally, the price will not vary by the  
20 hour; is that correct?

21          A. (Dr. O'Connor) Generally so, yes.

22          Q. Does NewEnergy always purchase power that

1 varies by the hour?

2 A. (Dr. O'Connor) Where the price varies by  
3 the hour?

4 Q. Yes.

5 A. (Dr. O'Connor) For the most part our  
6 purchases are fixed prices in the hour, but there can  
7 be some variability. Mr. Bramschreiber can respond  
8 further to that.

9 A. (Mr. Bramschreiber) What you often end  
10 up with after the contract is negotiated is a price at  
11 the end that is constant for all hours with the  
12 variability embedded within it. So the prices by hour  
13 may vary under the contract but it's all weighted and  
14 the end result is a price for all hours.

15 Q. So if you are buying a package of power  
16 to serve -- strike that. If you are buying a package  
17 of power over a specified term, you will often agree  
18 to a single per unit price that will apply in all  
19 hours, correct?

20 A. (Mr. Bramschreiber) That's been weighted  
21 to reflect the months of the agreement as well as the  
22 flexibility or variability in the hour loads, yes.

1           Q.   Would you look at your surrebuttal, pages  
2   6 and 7? I want you to look at the portion of the  
3   testimony where you criticize Mr. Naumann for the use  
4   of the term "realtime" and you go on to say on page 7,  
5   lines 4 and 5, you use the term "hourly" not once, not  
6   twice, but no less than five times the word "hourly"  
7   is used. Isn't it correct that the Public Utilities  
8   Act defines realtime pricing as prices that change  
9   hourly for non-residential customers?

10           MR. FEIN: Do you want to show him that  
11   portion of the Act or is that --

12           MS. READ: Well, the witness has stated his  
13   familiarity with the Act throughout his testimony. If  
14   he needs a portion of the Act, I would be happy to  
15   point him to one. But I would like to know if the  
16   witness is aware that the Public Utilities Act --  
17   strike that.

18           Q.       Do you know whether the Public  
19   Utilities Act defines realtime pricing with reference  
20   to hourly pricing for non-residential customers?

21           A.   (Dr. O'Connor) I believe that the  
22   realtime pricing tariffs that are in place provide for

1       that. Whether the statute specifically defines it  
2       that way or not, I don't recall.

3               Q. The statute will speak for itself on that  
4       so we don't need to go over that. NewEnergy then is  
5       not a retail customer as defined in the law, correct?

6               A. (Dr. O'Connor) Our offices are 306 West  
7       Washington but other than that, no.

8               Q. Does NewEnergy purchase power to serve  
9       each individual retail customer that it has  
10      individually or does it purchase power for its  
11      aggregate load?

12              A. (Mr. Bramschreiber) We purchase the  
13      aggregate.

14              Q. And you schedule for aggregate load,  
15      correct?

16              A. (Mr. Bramschreiber) Yes, on an hourly  
17      basis, yes.

18              Q. You don't submit a separate schedule for  
19      each individual retail customer, correct?

20              A. (Mr. Bramschreiber) Correct.

21              A. (Dr. O'Connor) Well, that depends on our  
22      FRP services. I'll just say no.

1           Q.   Would you explain that reference that  
2 depends on your FRP service?

3           A.   (Dr. O'Connor)   Just to make it simple,  
4 if your question would exclude any customers served  
5 pursuant to the FRP load that was a function of  
6 ComEd's making wholesale power available in tandem  
7 with the last MVI, let's put that aside, we then do  
8 buy in the aggregate and schedule hourly in the  
9 aggregate.

10          Q.   Let's talk about that FRP load you were  
11 talking about.

12          A.   (Dr. O'Connor)   FRP.

13          Q.   FRP, I'm sorry.   That's the wholesale  
14 offer that was part of the first phase of this  
15 proceeding, that's what you are referring to?

16          A.   (Dr. O'Connor)   Right.

17          Q.   And to the extent NewEnergy takes power  
18 and energy from ComEd under that wholesale offer, it  
19 doesn't do any scheduling at all, correct?

20          A.   (Mr. Bramschreiber)   Correct.

21          A.   (Dr. O'Connor)   Right.

22          Q.   ComEd does the scheduling in that

1 instance, correct?

2 A. (Mr. Bramschreiber) Correct.

3 Q. And is that -- were you or are you on  
4 that for all of your load or just a portion of your  
5 load?

6 A. (Mr. Bramschreiber) Currently, a very,  
7 very small portion is on FRP service. The bulk of the  
8 customers are being directly served as of October 1.

9 Q. As of October 1. So over the summer the  
10 bulk of the customers were on the FRP load?

11 A. (Mr. Bramschreiber) Correct.

12 Q. And as to the customers that are not  
13 currently on the FRP load, you supply, arrange supply,  
14 for them and schedule for them in the aggregate?

15 A. (Mr. Bramschreiber) Right, and our  
16 schedule is then added with ComEd's wholesale FRP  
17 schedule for a single NewEnergy schedule.

18 Q. Would you agree that electricity is  
19 bought and sold as a commodity product?

20 A. (Dr. O'Connor) Well, there are probably  
21 a lot of answers to that question. It depends on what  
22 the buyer sees. There are certainly areas and levels

1 at which electricity is a pure commodity. However,  
2 you or I as a retail customer may see it somewhat  
3 differently. Whether it's bought on a bundled basis  
4 or perhaps even if we buy it on an unbundled basis, we  
5 may not perceive it purely as a commodity.

6 Q. So electricity can be bought and sold as  
7 a commodity, and that commodity can also be bundled  
8 with various services for a package offer to a  
9 customer?

10 A. (Dr. O'Connor) That's certainly one way,  
11 yes, of thinking about it.

12 Q. NewEnergy bills itself as one of the  
13 largest energy services companies, correct?

14 A. (Dr. O'Connor) Yes.

15 Q. And NewEnergy also publicly states that  
16 its supply team monitors the market to obtain maximum  
17 profitability for its customers by procuring long term  
18 seasonal excess capacity in spot market power?

19 A. (Dr. O'Connor) I don't know.

20 MR. FEIN: If counsel could give a reference  
21 where they publicly state what she was referring to,  
22 obviously she is referring to some statement somewhere



1 at some point in time.

2 MS. READ:

3 Q. Mr. O'Connor, you are familiar with  
4 NewEnergy's web site; are you not?

5 A. (Dr. O'Connor) I haven't looked at it  
6 recently. Just as, you know we went through this last  
7 time around, the web site is the NewEnergy, Inc., web  
8 site and doesn't have a lot of relevance to the  
9 NewEnergy Midwest business.

10 Q. Have you previously been quoted in press  
11 releases and newspapers with regard to your web site?

12 A. (Dr. O'Connor) I don't know. Have I?

13 Q. I think you have been. Do you recall a  
14 quote where you stated recently NewEnergy's web site  
15 was named as one of the top two in the energy industry  
16 and went on to say "We are committed to continuing to  
17 evolve our internet presence and remain at the front  
18 of the industry in this area"?

19 A. (Dr. O'Connor) What day was that?

20 Q. That was November 2, 1999.

21 A. (Dr. O'Connor) Yeah, I vaguely remember  
22 it.

1           Q. Is NewEnergy's web site designed to be  
2 accessible to Illinois customers?

3           A. (Dr. O'Connor) Yes, you can access it  
4 here.

5           Q. Are there portions of NewEnergy's web  
6 site that are clearly labeled as not applicable to  
7 NewEnergy Midwest for Illinois customers?

8           A. (Dr. O'Connor) No.

9           Q. And do you recall whether or not your web  
10 site states that NewEnergy procures long term seasonal  
11 excess capacity in spot market power?

12          A. (Dr. O'Connor) I don't have a  
13 recollection of that. To the extent that that is  
14 there, that had reference primarily to the California  
15 market and perhaps in the PGM area, but it certainly  
16 is not applicable in the Midwest market that NewEnergy  
17 Midwest serves.

18          Q. Okay. So your supply team in the Midwest  
19 market does not regularly monitor the market and  
20 procure long term seasonal excess capacity in spot  
21 market power for its customers?

22          A. (Dr. O'Connor) Well, they certainly

1       monitor the market. But we are not in the business of  
2       daily trading, as an example.

3               Q. And the trading floor that Mr. Kagan  
4       references in his testimony, does that supply power  
5       for NewEnergy Midwest or -- well, does it?

6               A. (Mr. Bramschreiber) No.

7               A. (Dr. O'Connor) No.

8               Q. It is correct, is it not, that it's not  
9       unusual for sellers of electricity to offer such  
10      services as portfolio management?

11              A. (Dr. O'Connor) What kind of portfolio  
12      management? What are you talking about?

13              Q. Portfolio power?

14              A. (Dr. O'Connor) You have to be more  
15      specific with me about the service.

16              Q. Okay. Do sellers of power offer risk  
17      management services sometimes in conjunction with the  
18      sales of power?

19              A. (Dr. O'Connor) Yes, that will happen.

20              Q. And do sellers of power sometimes offer  
21      scheduling services in conjunction with the sale of  
22      power and energy?

1           A. (Dr. O'Connor) It may be separate but  
2 more often than not it's bundled just as the risk  
3 management is.

4           Q. Do sellers of power and energy sometimes  
5 offer to accept imbalance risk as part of a supply  
6 transaction?

7           A. (Dr. O'Connor) Oh, yes, sure.

8           Q. But that's not always the case, correct?

9           A. (Dr. O'Connor) Not necessarily.

10          Q. Do you agree that there are a number of  
11 factors that can affect the price of electricity  
12 between a buyer and a seller?

13          A. (Dr. O'Connor) Yes.

14          Q. And that includes, for example, the  
15 timing of the purchase, correct?

16          A. (Dr. O'Connor) That would be one factor.

17          Q. The volume of the purchase?

18          A. (Dr. O'Connor) That would be a factor.

19          Q. The willingness of the buyer or seller to  
20 accept or manage risk?

21          A. (Dr. O'Connor) Yes, that would be a  
22 factor.

1 Q. Load factor of the power being purchased?

2 A. (Dr. O'Connor) That would be a factor.

3 Q. Whether the seller must take a given  
4 quantity or has the option to choose how much to take  
5 in particular periods?

6 A. (Dr. O'Connor) Right, that would also be  
7 a factor.

8 Q. And the number of services being provided  
9 such as scheduling or imbalance, assumption of  
10 imbalance risk, would that be a factor?

11 A. (Dr. O'Connor) Yes, along with the other  
12 services.

13 Q. There may be other factors as well?

14 A. (Dr. O'Connor) Certainly.

15 Q. There are a number of ways suppliers can  
16 save on the cost of supply, for example, by whom they  
17 purchase or choosing whom they purchase from, building  
18 their own generation, participating in available DSM  
19 programs, correct?

20 A. (Dr. O'Connor) Run that by me again. I  
21 was with you up until the third one.

22 Q. There are a number of ways that

1 alternative retail electric suppliers can manage their  
2 costs of providing energy services to retail customers  
3 such as choosing the products they purchase and who  
4 they purchase them from, whether or not they build  
5 their own generation, and participation in utility DSM  
6 programs?

7 A. (Dr. O'Connor) Certainly, the first two.  
8 The third one is a little more "ify." You really have  
9 to spend an afternoon exploring that. It is certainly  
10 conceivable that those are there, yes, but I wouldn't  
11 rank it right now with the other two.

12 Q. Could you look at your surrebuttal on  
13 page 4? Bear with me a second because I managed to  
14 put that copy in the wrong pile. And I want you to  
15 look at page 4, lines 7 through 10, where there is a  
16 question that summarizes Mr. Crumrine's and  
17 Mr. Nichols' testimony, and then line 10 you say  
18 "NewEnergy has made no such suggestion."

19 A. (Dr. O'Connor) I'm sorry. Was that a  
20 question?

21 Q. I am just referring you to it and Tom was  
22 still reading so I didn't want to start a question

1       until he looked up.

2                       Would you go to your direct, page 10, and  
3       I want you to look at lines 7 through 10 where you  
4       state "Market values shall be determined based on the  
5       market in which the utility sells electric power and  
6       energy. The Act makes no reference whatsoever that  
7       market value shall be determined based on the market  
8       in which the utility buys electric power and energy."  
9       Do you see those lines?

10                   A. (Dr. O'Connor) Yes.

11                   Q. You were not intending to imply there  
12       that the utility buys and sells in different markets?

13                   A. (Dr. O'Connor) Oh, I see what you are  
14       after, okay. Shall we spend some time with this?

15                   Q. Well, just, were you or were you not  
16       intending to imply that the utility buys and sells in  
17       different markets?

18                   A. (Dr. O'Connor) We were saying that there  
19       is indeed a different product being bought, and the  
20       markets have both a geographic and a product dimension  
21       to them. To the extent that the product in question  
22       is different, those are different markets.

1           Q. Do you think a utility buys and sells in  
2           the same market or in different markets?

3           A. (Dr. O'Connor) The markets are different  
4           in terms of the customers and the participants in the  
5           market. So they are distinguishable in that respect.

6           Q. So, in fact, you are postulating separate  
7           buy and sell markets, correct?

8           A. (Dr. O'Connor) No, we were being accused  
9           of confusing the very nature of the energy market, and  
10          we will maintain that we are not confused about the  
11          nature of the energy market.

12          Q. I think in your surrebuttal testimony the  
13          question was that you confused the nature of the  
14          energy market by postulating separate buy and sell  
15          markets, and you then say you have made no such  
16          suggestion.

17          A. But you would agree with me, I think,  
18          that what I have just described to you is much more  
19          nuanced than what Mr. Nichols or Mr. Crumrine were  
20          suggesting.

21          Q. I might or might not agree with what you  
22          just said was more nuanced, but I wouldn't agree that



1     your direct testimony reflected the nuance you just  
2     reflected.

3             A.   (Dr. O'Connor)   Well, then we disagree.

4             Q.   Is it correct that a utility does not  
5     always sell at a higher price than it buys?

6             A.   (Dr. O'Connor)   Sorry, could you repeat  
7     that?

8             Q.   Is it correct that a utility does not  
9     always sell at a higher price than it buys?

10            A.   I think that's a correct statement, yes,  
11     that sometimes a utility may sell the product at a  
12     different price than it paid to assemble the  
13     components to provide that power.   They may lose  
14     money.

15            Q.   And you have provided no studies or  
16     analyses that lay out different types of electricity  
17     products and how they differ in price at certain  
18     points in time, correct?

19            A.   (Dr. O'Connor)   It's fair to say that we  
20     haven't provided any study as such.

21            Q.   Other than your testimony you have  
22     provided no workpapers, analyses, relied upon

1 documents regarding this issue, correct?

2 A. (Mr. Bramschreiber) That is correct. I  
3 don't believe we have forwarded through the data  
4 requests any additional workpapers.

5 Q. Do you think that the -- is it your  
6 testimony that the market in which a utility sells is  
7 a different market than in which its customers buy?

8 A. (Dr. O'Connor) Could you repeat that  
9 again? I want to make sure I understand very clearly  
10 what you are asking.

11 MS. READ: Could the court reporter please  
12 read the question back?

13 (Whereupon the requested  
14 portion was then read back by  
15 the Reporter.)

16 A. (Dr. O'Connor) Well, obviously, it is  
17 selling to customers. So on each side of the sale of  
18 a utility there is a customer.

19 MS. READ:

20 Q. Correct. A customer can't -- a utility  
21 can't make a sale without a customer, correct?

22 A. (Dr. O'Connor) The customer may not be

1 in the utility's service territory. So there may be a  
2 utility, for instance, in another state which is a  
3 customer of the utility, but that has no relevance to  
4 whether the customer is in the service territory of  
5 the utility. So in that respect those are different.

6 Q. Is NewEnergy in ComEd's service area?

7 A. (Dr. O'Connor) Are we physically?

8 Q. Yes.

9 A. (Dr. O'Connor) Yes, we have an office.

10 Q. And are you active as an alternative  
11 retail electric supplier in ComEd's service area?

12 A. (Dr. O'Connor) Right, we serve retail  
13 customers in the ComEd service territory.

14 Q. And that's true of Nicor Energy as well?

15 A. (Dr. O'Connor) I believe so, yes.

16 Q. That's true of Unicom Energy as well?

17 A. (Dr. O'Connor) Yes.

18 Q. And that's true of MidAmerican Energy?

19 A. (Dr. O'Connor) Yes.

20 Q. True of CILCO?

21 A. (Dr. O'Connor) Yes.

22 Q. True of Ameren Energy?

1 A. (Dr. O'Connor) I believe so.

2 Q. Do you know where each of those suppliers  
3 buys their power?

4 A. (Dr. O'Connor) Not completely, no.

5 Q. And you don't know the price at which  
6 those suppliers purchase power, correct?

7 A. (Dr. O'Connor) No, we don't know that.

8 Q. If you would look at your direct, page 8,  
9 lines 7 through 11, you have a partial quote there  
10 from Section 16-111(a) of the Act, correct?

11 A. (Dr. O'Connor) Yes.

12 MR. FEIN: Counselor, I think you mean  
13 16-112.

14 MS. READ:

15 Q. I'm sorry, 16-112(a) of the Act.

16 A. (Dr. O'Connor) Sarah, I trust you so  
17 much.

18 Q. It's because I was pulling an exhibit. I  
19 wasn't listening to what I was saying. 16-112 is  
20 where you intend to refer there, correct?

21 A. (Dr. O'Connor) Yes.

22 Q. And it's that quote that serves as the

1 basis for your argument on lines 13 through 14 that  
2 there has to be a geographic dimension of a market and  
3 a product dimension of a market, correct?

4 A. (Dr. O'Connor) No. For the statement  
5 that there is both the product and the market  
6 dimension, I don't rely merely on the quote from the  
7 statute. I mean, that's a pretty well understood --  
8 you know, you don't have to be a rocket scientist to  
9 know that.

10 Q. Do you rely on that portion of the Act  
11 for your conclusions as to how to define the  
12 geographic and product dimension of a market in this  
13 proceeding?

14 A. (Dr. O'Connor) Yeah, we do place  
15 reliance on that, yes.

16 Q. Do you have a copy of Section 16 -112(a)  
17 with you?

18 A. (Dr. O'Connor) No, I don't.

19 MS. READ: Can I approach the witness,  
20 please? If the Hearing Examiner wants a copy of the  
21 statute, I would be happy to give him one, too.

22 EXAMINER JONES: Thank you.

1 MS. READ:

2 Q. Now, line 8, the quote begins with an  
3 ellipse and the omitted phrase is "a determination of  
4 the market value for electric power and energy,"  
5 correct?

6 A. (Dr. O'Connor) Yes.

7 Q. And then the words "be determined" are  
8 actually not in the statute so the quote picks up "as  
9 a function of"?

10 A. (Dr. O'Connor) Right.

11 Q. Did you consider whether the General  
12 Assembly might have intended electric power and energy  
13 to be the product considered in this proceeding?

14 A. (Mr. Bramschreiber) Can I ask a  
15 question? The "to be determined" phrase that you just  
16 used, it's not here in the statute.

17 Q. It's in your testimony, line 8.

18 A. (Dr. O'Connor) The quotation mark is in  
19 the wrong place. Yeah, it was just misplaced. The  
20 "to be determined" is up in the first line.

21 Q. So in fact what you --

22 A. (Dr. O'Connor) Second line of 112(a).

1           Q. The statute should read "A determination  
2 of the market value for electric power and energy as a  
3 function of" and then it goes and lists a number of  
4 things that can be looked to "be applicable to the  
5 market in which the utility sells and the customers in  
6 its service area buy electric power and energy"?

7           A. (Dr. O'Connor) Right.

8           Q. Under your reading of the statute you  
9 don't understand electric power and energy to be the  
10 product and the remainder to be the geographic  
11 definition?

12           MR. FEIN: Remainder of what?

13           A. (Dr. O'Connor) Well, obviously,  
14 electric power and energy is the product. But as you  
15 will note, it's further modified as being the market  
16 in which the utility sells and the customers in its  
17 service territory buy electric power and energy.

18           MS. READ:

19           Q. Well, it says applicable to the market,  
20 right?

21           A. (Dr. O'Connor) That's right. Market is  
22 not a purely geographic notion. "Market in which"

1       just as easily and more likely means the full  
2       definition of the market.

3               Q.   You would agree that the phrase  
4       "applicable to the market in which the utility sells  
5       and the customers in its service area buy electric  
6       power and energy" is the geographic definition?

7               A.   (Dr. O'Connor) No, I didn't say that.

8               Q.   So it's your testimony that that phrase  
9       not only defines the geographic location of the  
10      market, but you read into that a limitation on the  
11      product identified in the first part of the statute,  
12      electric power and energy?

13              MR. FEIN:  Objection, mischaracterizes the  
14      witness' testimony.  Maybe she can ask him if he  
15      agrees with that statement, but that's not what he  
16      just said.

17              MS. READ:  I think that's how I started out.  
18      Could you please re-read the question?

19                               (Whereupon the requested  
20                               portion was then read back by  
21                               the Reporter.)

22              EXAMINER JONES:  Well, it sounds like a



1 question to me.

2 A. (Dr. O'Connor) I'm not sure I even  
3 understand the question, but I can say, I think,  
4 simply enough that what we have done is to take the  
5 least absurd meaning of this which is that market has  
6 a geographic and a product definition. We know it as  
7 well as participants, and that's what this language  
8 helps us understand is the definition of the market in  
9 terms of historically where it is, what it is that's  
10 being sold, and who it is that are the participants in  
11 the market. So that the Chicago Board of Trade grain  
12 market is not simply that physical pit. It has to do  
13 with what's being sold. It has to do with who is  
14 participating, for instance.

15 MS. READ:

16 Q. Look at your testimony, direct, page 5.  
17 Look at lines 11 and 12 where you use the phrase  
18 "properly reflective of the true cost of serving  
19 retail customers both operationally and economically."  
20 Do you see that phrase?

21 A. (Dr. O'Connor) Yes.

22 Q. Turn to your rebuttal, page 16 and 17.

1 Well, I'll give you a better reference than your  
2 rebuttal. I'm sorry, we will skip that because the  
3 words aren't exactly the same, and take you to your  
4 surrebuttal, page 3, lines 12 through 13, where the  
5 same phrase appears.

6 EXAMINER JONES: What page?

7 MS. READ:

8 Q. Page 3, lines 12 and 13. And I think  
9 page 3, lines 12 through 13, the phrase is followed by  
10 "as the Act requires." The phrase "retail customers,"  
11 I believe you have already testified, does not appear  
12 anywhere in 16-112(a), correct?

13 A. (Dr. O'Connor) I believe that's right.

14 Q. And the phrase "operationally and  
15 economically" does not appear in 16-112(a), correct?

16 A. (Dr. O'Connor) That's true.

17 Q. The phrase "true cost" does not appear in  
18 16-112(a), correct?

19 A. (Dr. O'Connor) That's true.

20 Q. Now, isn't it correct that when you use  
21 this phrase --

22 A. (Dr. O'Connor) Sarah, which phrase is

1       that?

2               Q.   Well, the RES's ability to replicate  
3   native load service operationally and economically?

4               A.   (Dr. O'Connor)   That's from the  
5   conclusion in the rebuttal.

6               Q.   Yeah.   And it's tied in with this page 3  
7   and also what was in your direct.   It's on page 9, for  
8   example, line 16.   I will ask it a different way.   You  
9   conclude in your testimony, do you not, that you need  
10   the ability to replicate native load operationally and  
11   economically in order to compete; is that your  
12   testimony?

13              A.   (Dr. O'Connor)   Yes, the ability,  
14   however, as you may recall, we were also making the  
15   point that it is said that we were required to say  
16   that we said no but we need to have the opportunity to  
17   do that.

18              Q.   But you would -- so you would agree you  
19   are not required to do it?

20              A.   (Dr. O'Connor)   By law, no.

21              Q.   When you use or refer to replicating  
22   native load service, you are referring to both this

1 operational standard and the economic standard.

2 That's what you mean by the phrase operationally and  
3 economically, right?

4 A. (Dr. O'Connor) Yes.

5 Q. And the operational standard in your mind  
6 is that suppliers should be afforded an opportunity to  
7 serve customers at the same level of transmission  
8 priority and flexibility as the utility serves native  
9 load customers, correct?

10 A. (Mr. Bramschreiber) Yes.

11 Q. And you agree that that standard is met  
12 in ComEd's service area for alternative retail  
13 electric suppliers, correct?

14 A. (Mr. Bramschreiber) We have the ability  
15 to serve at that level, yes.

16 Q. Your economic standard is that you want  
17 to purchase at the same price embedded in the market  
18 value calculation, correct?

19 A. (Mr. Bramschreiber) It has to do with  
20 the components that make up the market value. For  
21 example, ComEd marketer firm, I can use marketer firm  
22 to serve a Priority 7 transmission. Then the question

1 is, can I do it at the price that is embedded within  
2 the market value.

3 Q. So the answer is yes, your standard is  
4 can you purchase power at the same price embedded in  
5 the market value calculation?

6 A. (Mr. Bramschreiber) Yes.

7 Q. And your argument about not being able to  
8 replicate native load operationally and economically  
9 in ComEd's service area, therefore, rests on your  
10 belief that you can't purchase power at the price you  
11 would like to purchase it at?

12 A. (Mr. Bramschreiber) No, at the price  
13 embedded within the market value index.

14 Q. You have agreed that there is not an  
15 operational issue in ComEd's service area, correct?

16 A. (Mr. Bramschreiber) For on-peak power  
17 blocks I can use financially firm, which is what's  
18 embedded in the index.

19 Q. So this is an economic --

20 MR. FEIN: Sarah, the witness wasn't  
21 finished.

22 MS. READ: Sorry.

1           A. (Mr. Bramschreiber) In terms of  
2 off-peak, we had to continually struggle with the fact  
3 that the indexes relied upon what we refer to as dump  
4 sales or what appears to be transactions between  
5 utility and does not reflect what the customer buys  
6 at. When a customer leaves the system, he is gone for  
7 at least 30 days. The power is freed up for 30 days  
8 and we have to serve the customer at least 30 days.  
9 It's more of a long term commitment, but we don't  
10 reflect it in the off-peak calculation.

11           MS. READ:

12           Q. Do you serve customers for only 30 days?

13           A. (Mr. Bramschreiber) We? No.

14           Q. Do you try to sign them up for much  
15 longer terms?

16           A. (Mr. Bramschreiber) Yes, we do.

17           Q. Has NewEnergy Midwest ever -- strike  
18 that. In the period January through September 1999  
19 did NewEnergy attempt to procure spot market power to  
20 serve its load?

21           A. (Mr. Bramschreiber) Of 2000?

22           Q. Oh, sorry, let me say this. Between

1       October 1, 1999 -- I was editing as I went -- and  
2       December 31, 1999, did NewEnergy Midwest attempt to  
3       procure spot market power to serve its retail  
4       customers in Illinois?

5               A.   (Mr. Bramschreiber)   That was the last  
6       quarter of '99?

7               Q.   Yes.

8               A.   (Mr. Bramschreiber)   My understanding,  
9       and Mike is probably a better witness for this, is  
10      that when we sign up a customer, we have undertaken a  
11      definite term commitment.  We are a load following  
12      entity to rely on the spot market to serve you with a  
13      firm load.  It's more speculative in nature and that's  
14      not the business we are in.

15              Q.   So the answer to my question is yes,  
16      NewEnergy Midwest did not between October 1, 1999, and  
17      the end of the year 1999 attempt to purchase spot  
18      market power?

19              A.   (Mr. Bramschreiber)   We may have.  They  
20      may have looked to do that, but to my knowledge the  
21      answer is no.

22              A.   (Dr. O'Connor)   We did make some dump

1 sales, I thought, but other than that, no.

2 Q. So NewEnergy Midwest does sell power?

3 A. (Dr. O'Connor) Back to ComEd when the  
4 occasion demands, at which point you can only get a  
5 low price. It then turns up in the numbers we are  
6 talking about here.

7 Q. How many transactions did -- actually, I  
8 will wait until we get into the confidential part on  
9 that. Did NewEnergy Midwest attempt to procure spot  
10 market power to serve its Illinois retail customers  
11 between January 1, 2000, and the end of September  
12 2000?

13 A. (Mr. Bramschreiber) I believe for the  
14 vast majority of our load it was served under a long  
15 term commitment, January through May. There probably  
16 were instances, I am assuming, when they may have made  
17 a spot transaction. But the bulk of the power was  
18 bought from a single supplier.

19 Q. But as you sit here today, you don't have  
20 in mind any particular such transaction?

21 A. (Mr. Bramschreiber) Not to my knowledge.

22 A. (Dr. O'Connor) In fact, Sarah, just let



1       me amplify, just so you have the full picture. I  
2       believe there may have been one or two days in May of  
3       2000 during the transition period, you know, going  
4       from non-summer to summer and from the NFF to the MVI,  
5       where I believe we may have made daily purchases, I  
6       think, one or two days in there.

7               Q. You may have. You are not sure?

8               A. (Mr. Bramschreiber) Can I follow up on  
9       that? The month of May was very tricky, of course,  
10       because the FRP service came into play. And where we  
11       had envisioned a certain type of ramp down for our  
12       customers when we initially entered the supply deal  
13       the prior year, that was no longer the case. So in  
14       order to fill in the blocks, or the pieces, the  
15       missing pieces, prior to the FRP kicking in for  
16       certain customers, we may have gone out and bought  
17       some type of short term transaction.

18              A. (Dr. O'Connor) They definitely were  
19       short term. They were for a day or two, and it was  
20       from one supplier not here in Illinois, and it did  
21       cover, I believe, a one or two-day gap. And the only  
22       reason I am being a little tentative is the word

1 "spot" has been used. And I just want to make clear  
2 it was a daily purchase. And whether or not somebody  
3 wants to call that spot or not, I am not going to -- I  
4 don't know.

5 Q. We can agree we are using spot as a  
6 day-ahead purchase.

7 A. (Dr. O'Connor) Fine. Then in that  
8 respect I believe that there was, yes, one or two days  
9 in May.

10 Q. Is it your testimony that only utilities  
11 can buy day-ahead power?

12 A. (Mr. Bramschreiber) I believe anybody  
13 could buy day-ahead power. Whether we would rely on  
14 it to serve a firm commitment is a different issue.

15 Q. So if -- strike that. I would like you  
16 to look at your surrebuttal, page 14. Now, the broker  
17 quotes on lines 10 through 22 are not actual broker  
18 quotes, correct?

19 A. (Mr. Bramschreiber) No. What begins on  
20 line 10 and extends over to the following page was an  
21 illustrative example of a calculation. It is not an  
22 actual broker quote.

1           Q. So on line 18 when it says a quote from  
2           the same broker, you are referring to the same  
3           illustrative example and not an actual broker?

4           A. (Mr. Bramschreiber) Correct, the entire  
5           example is just illustrative, yes.

6           Q. And so those numbers are not supported by  
7           any actual market data or actual broker quotes  
8           solicited, correct?

9           A. (Mr. Bramschreiber) Correct. That's a  
10          methodology, yes.

11          Q. And to the extent the remainder of your  
12          testimony and the attachments rely on those numbers,  
13          those are similarly illustrative, correct?

14          A. (Mr. Bramschreiber) Right, and I believe  
15          the table itself, somewhere it refers to illustrative  
16          scale of box, for example, in the box, page 1 of 3, of  
17          that attachment.

18          Q. And those scaling illustrations then all  
19          begin with these illustrative numbers?

20          A. (Mr. Bramschreiber) Yes.

21          Q. Would you explain for me line 16 of page  
22          15 of your surrebuttal testimony? I am very curious

1 as to why you would use a mid-point of calendar year  
2 bid/offer broker quotes from Cinergy as an off-peak  
3 proxy for ComEd. Could you just explain to me your  
4 rationale behind that proposal?

5 A. (Mr. Bramschreiber) What's contained on  
6 line 16 and 17 on page 15 was another methodology for  
7 the non-volatile off-peak period to capture what the  
8 market perceives as a forward-looking price. Cinergy,  
9 for example, which is generally regarded as being a  
10 much more liquid market use of a bid/offer, we would  
11 view as a separate offer for ComEd which is much more  
12 liquid.

13 Q. But a calendar year covers both off -peak  
14 and on-peak, correct?

15 A. (Mr. Bramschreiber) You can get a quote  
16 that is simply from the off -peak period from Cinergy.

17 Q. So on line 16 did you mean to use  
18 calendar year or did you mean to use off -peak?

19 A. (Mr. Bramschreiber) Well, the word  
20 "off-peak" is in line 17. What's referred to here is  
21 a calendar year off-peak broker quote.

22 Q. Okay. So that should have been a

1 calendar year off-peak bid/offer broker quote?

2 A. (Mr. Bramschreiber) If that makes it  
3 clear, yes, that's what it is.

4 Q. On your surrebuttal, page 21, line 8 and  
5 13, you use the phrase "assumes actual hourly prices"?

6 A. (Mr. Bramschreiber) Yes.

7 Q. And I understand from that, that the  
8 hourly prices used in your Attachment A are simply  
9 assumed, as explained here?

10 A. (Mr. Bramschreiber) Right, the table  
11 simply took what was the historical price and  
12 increased it each hour by, in the example on line 8,  
13 by 15 percent, and the example on line 13 was to  
14 reduce it by 15 percent, each of those hours on that  
15 table.

16 Q. So, again, that's not using actual market  
17 data, correct?

18 A. (Mr. Bramschreiber) No. And in reality,  
19 if hourly loads were ten percent higher, that would be  
20 a peak day and that percentage would be  
21 extraordinarily higher than that.

22 A. (Dr. O'Connor) Again, the question that

1 is being responded to is what happens when actual  
2 hourly prices and actual hourly loads deviate from  
3 expected or historical averages. So, you know, the  
4 illustration is asking you to make an assumption.

5 Q. And that assumption is not based on  
6 actual market studies, correct?

7 MR. FEIN: Asked and answered.

8 MS. READ: I think the answer was confusing,  
9 because I think I couldn't tell whether his no meant  
10 no, it was not correct, or no, it was correct, it  
11 wasn't based on actual market data. So I think the  
12 record is unclear in that respect.

13 EXAMINER JONES: I think the question is  
14 proper. Go ahead and answer it.

15 A. (Mr. Bramschreiber) The example that's  
16 included as PRO-8 -- I will look at Table 1 of 2, for  
17 example -- if you look at the hourly load that's  
18 included there and in this example we simply increased  
19 the hourly load each hour by ten percent, if I looked  
20 at Rate Class 6 which is what is reflected in Column D  
21 and increased each hour by ten percent, that in fact  
22 is virtually its peak day. On a peak day I think it's

1       very easy to argue that prices in fact would not be 15  
2       percent above historical levels. They would be a  
3       multiple of that. But this is just illustrative on  
4       assumed pricing increase and assumed loading increase.

5               MS. READ:

6               Q. Yes. And my question was, is it correct  
7       that those assumptions are not based on studies of  
8       actual market data?

9               A. (Mr. Bramschreiber) It's purely an  
10      assumption, correct.

11              A. (Dr. O'Connor) Sarah, the whole point is  
12      it's asking what would happen in the future if, in  
13      reality, future reality departed from past reality.  
14      And, therefore, you don't have the information upon  
15      which to assume the specific deviation. You would  
16      have to make an assumption as to what that deviation  
17      would be in the future.

18              Q. On your surrebuttal, page 6 through 7,  
19      where you are responding to Mr. Naumann, do I  
20      correctly understand your testimony to be that  
21      NewEnergy is not required to purchase load following  
22      service?

1           A. (Mr. Bramschreiber) What line was that  
2 again?

3           Q. It's basically your full question and  
4 answer on pages 6 and 7. And the question is, do you  
5 agree that NewEnergy is not required to use load  
6 following service?

7           A. (Mr. Bramschreiber) I use the phrase  
8 "load following service" more or less to basically  
9 state that you follow your load up and down. I  
10 believe that there are more than one ways to do that.  
11 I struggle with how ComEd's tariff is written when the  
12 words "minimized" are included within it as well as  
13 the delivery service plan which instructs you to do  
14 that virtually at all times or by each hour. I  
15 struggle with the Aztec method that's included. And,  
16 again, "hourly" as defined in the dictionary is a unit  
17 of measure.

18          Q. You have a definition of minimize on page  
19 7, lines 15 through 17, correct?

20          EXAMINER JONES: Page 7?

21          A. (Mr. Bramschreiber) Yes, American  
22 Heritage Dictionary that we had in the office.





1           A. (Mr. Bramschreiber) With pictures.

2           Q. I am glad you can afford it.

3           EXAMINER JONES: What's the edition on that?

4           MR. READ: Third edition.

5           EXAMINER JONES: Does it have a date?

6           MS. READ: I will give you a date. It was  
7 published in 1994 and still sold.

8           MR. BRAMSCHREIBER: We will check the  
9 publication of ours.

10          MS. READ:

11          Q. If you would look at your surrebuttal,  
12 page 16, line 22, I want you to look at the statement  
13 that ComEd's methodology only acknowledges expected  
14 variations. Is it correct that ComEd's methodology  
15 looks at forward prices and then uses pricing data  
16 from PJM, all capitals, to shape that price?

17          A. For the on-peak period ComEd's  
18 methodology relies on forward-looking blocks and then  
19 assumes a historical price shape and assumes history  
20 repeats itself.

21          Q. Let's consider that 5 by 16 block. Isn't  
22 it correct that, for example, for the month of July in

1       that 5 by 16 block, ComEd will look at all of the  
2       prices that occurred in a stated hour on each weekday  
3       in the month and then average those together, if you  
4       know?

5               A.   (Mr. Bramschreiber)   Can you say that  
6       again?

7               MS. READ:   Could you read it back, please.

8                               (Whereupon the requested  
9                               portion was then read back by  
10                              the Reporter.)

11              A.   (Mr. Bramschreiber)   The answer that you  
12       arrive at are the ComEd methods are the same as the  
13       Zuraski methodology in that it is a load-weighted  
14       average.   I'm not sure if they break it down hourly  
15       and average them or if they take all the on -peak hours  
16       and average them.   There is an averaging going on.

17              MS. READ:

18              Q.   But the answer is you don't know?

19              A.   (Mr. Bramschreiber)   I do not know if the  
20       big giant table they have does it that way.   I know  
21       what the answer is at the end.

22              Q.   I want you to assume that ComEd does look

1 at all the prices that occurred in a stated hour on  
2 each weekday in the month. And I want you to assume,  
3 for example, historically that the 15th hour for July,  
4 one weekday in July, was \$62 and the price for the  
5 15th hour on another weekday in July was \$979 per  
6 megawatt.

7 A. (Dr. O'Connor) Can I ask a clarifying  
8 question? What's the historical period?

9 Q. The historical period would be the period  
10 you are looking at for the PJM price data to be used  
11 in the load shaping.

12 A. (Dr. O'Connor) I am just wondering how  
13 many years of data.

14 Q. Let's just say you are going back one  
15 year from now in this assumption.

16 A. (Mr. Bramschreiber) Was your question  
17 comparing hour 15 to hour 16 on the same day?

18 Q. No, hour 15 on two different weekdays.  
19 One weekday in July it was \$62 was the actual price at  
20 PJM per megawatt.

21 A. (Mr. Bramschreiber) At PJM, okay.

22 Q. Right. And on a later weekday in that

1 same month it was \$979 per megawatt.

2 A. (Mr. Bramschreiber) Uh-huh.

3 Q. Have you got that assumption?

4 A. (Mr. Bramschreiber) Okay.

5 Q. Would you call that an expected  
6 variation?

7 A. (Mr. Bramschreiber) That is an  
8 historical actual number. I would refer to that as  
9 expected. It's based on history.

10 Q. Could that be a -- I want you to further  
11 assume that's a minimum and a maximum price that  
12 occurred in hour 15 in that particular month, okay?

13 A. (Mr. Bramschreiber) Okay.

14 Q. Would you expect that same variation to  
15 occur in July of the following year?

16 A. (Mr. Bramschreiber) No matter what  
17 occurs in July of the following year, I have to  
18 schedule for my load for that hour. Whether prices  
19 are within that minimum and maximum that you have  
20 alluded to, or outside.

21 Q. When you are scheduling to supply your  
22 load, would you build a buying strategy based on that

1 particular variation?

2 A. (Mr. Bramschreiber) We buy on a  
3 forward-looking basis for a defined period of time,  
4 and we lock in our cost of supply based on that well  
5 in advance of this blow-out date that you are  
6 referring to.

7 Q. When you are determining your cost of  
8 supply, do you look at historical prices and say that  
9 sets the expected for this upcoming month?

10 A. (Mr. Bramschreiber) The shape of  
11 historical prices is a component of our pricing model.

12 Q. And is the expected variation in your  
13 pricing model set by historic lows and highs for given  
14 periods?

15 A. (Mr. Bramschreiber) The expected price  
16 shape that we have in our models is reflective of  
17 historical actuals.

18 Q. An actual on any given day -- strike  
19 that. Let's say that the \$9.79 price occurred on hour  
20 15 on July 23, 1999. Would you expect that same price  
21 to occur on July 23, 2000?

22 A. (Mr. Bramschreiber) I would expect every

1 price and every volume to be different, and I have to  
2 serve my customers based on that.

3 Q. So the price at which market is -- strike  
4 that. The actual price on any given day and the day  
5 on which the price, that price, will occur is  
6 unpredictable, right?

7 A. (Mr. Bramschreiber) I didn't follow you.  
8 Can you say that again?

9 MS. READ: Strike that. You know what, I  
10 think I am going to need to go into the confidential  
11 line of questions and that will be my final line of  
12 questions. And this might be a good time to do it.  
13 It might be easier.

14 We have signed a confidentiality  
15 agreement with NewEnergy. I'm not sure if the AG has.  
16 I think they have and Staff.

17 EXAMINER JONES: Off the record briefly  
18 regarding this.

19 (Whereupon there was then had  
20 an off-the-record  
21 discussion.)

22 EXAMINER JONES: Back on the record. We

1       hereby go into the in camera portion of the hearing in  
2       order to hear the questions and answers on the  
3       confidential information.

4                               (Whereupon the following  
5                               pages 531 through  
6                               574 are contained under  
7                               separate cover for the in  
8                               camera portion of the  
9                               proceedings.)

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1 CONTINUATION OF PROCEEDINGS

2 EXAMINER JONES: Back on the record. We are  
3 now in public session, not in camera. I should note  
4 while we were on the public record that during the off  
5 camera portion that we just concluded, there was a  
6 ruling made by me instructing NewEnergy to release to  
7 ComEd certain documentation. And at the present time  
8 NewEnergy is, as I understand it, contacting the other  
9 party to that contract regarding that; is that  
10 correct?

11 MR. FEIN: That is correct.

12 EXAMINER JONES: And then in connection with  
13 that also attempting to obtain the copies of that  
14 documentation.

15 MR. FEIN: Yeah, actually, I believe the  
16 appropriate release to divulge information contained  
17 in that document which was then contained in a  
18 workpaper that Mr. Bramschreiber described.

19 EXAMINER JONES: I wanted to mention that now  
20 because that was done in the in camera record and so  
21 there would be people in here that would not have had  
22 access to that discussion or ruling.

1                   In addition, there was some documentation  
2     provided by NewEnergy to ComEd pertaining to some  
3     surrebuttal testimony. ComEd is in the process of  
4     reviewing that documentation at this time. What we  
5     will do next is allow any other parties that have  
6     questions of the NewEnergy panel to ask those and then  
7     we will see where we are at at that time. It's my  
8     understanding that Mr. Lakshmanan has some and perhaps  
9     no one else. So Mr. Lakshmanan, you want to proceed  
10    with your questions of these witnesses, please?

11                   CROSS EXAMINATION

12                   BY MR. LAKSHMANAN:

13                   Q. Thank you. And good afternoon,  
14     gentlemen.

15                   A. Good afternoon.

16                   Q. I have a couple questions, the first set  
17     of which relates to the similar phrase that was  
18     discussed earlier in the record on page 5, for  
19     instance -- I'm sorry, page 5 of your direct  
20     testimony, line 11, talking about reflective of the  
21     true cost of serving retail customers. Do you see  
22     that?

1           A. (Dr. O'Connor) Yes.

2           A. (Mr. Bramschreiber) Yes.

3           Q. Let me ask you a hypothetical and please  
4 let me know if any of the base hypotheses either don't  
5 work or if you don't understand them.

6                     First, I would like you to assume that  
7 NewEnergy is the sole supplier of a full requirements  
8 customer at a fixed price. Second, please assume that  
9 the customer's usage is greater than that which was  
10 projected in a given time period. And, third, please  
11 assume that the cost to NewEnergy to acquire the  
12 energy to serve that customer is below the market  
13 value used to set that customer's transition charge.

14           A. (Dr. O'Connor) Could you repeat the  
15 third condition again?

16           Q. Certainly. Please assume that the cost  
17 to NewEnergy to acquire the energy to serve that  
18 customer is below the market value which was used to  
19 set that customer's transition charge.

20           A. (Dr. O'Connor) I take it the energy is  
21 for both the expected load and the unexpected, or just  
22 for the expected load?

1 Q. For both.

2 A. (Mr. Bramschreiber) And in the  
3 hypothetical, usage is greater than projected and  
4 price is lower than the market values; you are saying  
5 demand is up and price is down, an inverse correlation  
6 between demand and price.

7 Q. That is correct, for this particular  
8 customer at this particular time. Under such a  
9 circumstance does the customer pay the fixed price in  
10 the NewEnergy contract or does the customer merely pay  
11 NewEnergy's lower cost of acquisition in that hour?

12 A. (Dr. O'Connor) It would depend on what  
13 the contract said.

14 Q. If the contract is for a fixed price.

15 A. (Dr. O'Connor) Oh, I'm sorry.

16 A. (Mr. Bramschreiber) The customer would  
17 pay NewEnergy the stated fixed price. NewEnergy went  
18 back, to back our deals, would have already procured a  
19 supplier as we entered into the contract to match his  
20 load and assume deviations from the expected usage.

21 Q. Thank you. With respect to your rebuttal  
22 testimony at page 11, lines 8 to 18 --

1           A. (Dr. O'Connor) I'm sorry, which page of  
2     the rebuttal?

3           Q. Page 11, lines 8 through 18, where you  
4     are talking about the PJM price shaping, and in  
5     particular at the end of it in which you talk about  
6     the same modifications to its load-weighted market  
7     value calculation as ComEd and Ameren have proposed.  
8     Do you see that?

9           A. (Dr. O'Connor) Yes.

10          Q. Are you aware that even if Illinois Power  
11     Company were to load shape using all 8,760 hours of  
12     PJM-West data, that this would not, quote, match the  
13     methodology proposed by ComEd and Ameren because the  
14     way PPO prices are set use a different shaping set of  
15     values? I am just asking if you are aware or not.

16          A. (Mr. Bramschreiber) I am not aware of  
17     that.

18          A. (Dr. O'Connor) Whether the PPO tariff --  
19     yeah, the PPO tariff is a little bit different than  
20     this, yes.

21          MR. LAKSHMANAN: Okay. That's all I have.  
22     Thank you.

1                   EXAMINER JONES: I believe the other parties  
2 do not have cross examination for the panel members  
3 other than additional ComEd cross. Do any of the  
4 other parties have any cross? Let the record show  
5 they do not. Off the record regarding what to do  
6 next.

7   (Whereupon there was then had  
8 an off-the-record  
9 discussion.)

10                  EXAMINER JONES: We hereby take a ten minute  
11 break.

12                                       (Whereupon the hearing was in  
13 a brief recess.)

14                  EXAMINER JONES: Back on the record.

15                  MR. FEIN: Very brief redirect, Your Honor.

16                  EXAMINER JONES: Does anybody need any sort  
17 of clarification on the status of this issue? I think  
18 we are ready to proceed with redirect, and that we  
19 will do. Mr. Fein?

20                  MR. FEIN: Thank you, Your Honor.

21                                       REDIRECT EXAMINATION

22                  BY MR. FEIN:

1           Q. Doctor O'Connor, do you recall that  
2       Ms. Read asked you a series of questions regarding  
3       customers and retail customers and your understanding  
4       of that term?

5           A. (Dr. O'Connor) Yes.

6           Q. Now, what is your understanding when the  
7       Public Utilities Act refers to consideration of the  
8       price at which customers cannot buy electric power and  
9       energy at? Specifically, what is your understanding  
10      of the reference to customers? Does that mean retail  
11      or wholesale customers?

12          MS. READ: Your Honor, I am going to object  
13      to the question. One, it misstates the statute. And,  
14      two, it's confused as to form.

15          MR. FEIN: If it would help Ms. Read, I would  
16      agree to restate the question.

17          MS. READ: All right.

18          MR. FEIN:

19          Q. Doctor O'Connor, what is your  
20      understanding of the use of the word "customers" at  
21      16-112 Sub A of the Public Utilities Act?

22          A. (Dr. O'Connor) My understanding is that

1       it would refer to retail customers.

2               Q.   And what is the basis for that  
3       understanding of yours?

4               A.   (Dr. O'Connor)   Two simple points, one  
5       would be the Public Utilities Act and the Illinois  
6       Commerce Commission regulates retail transactions.  
7       And, second, if the legislature had meant ARES, they  
8       probably would have said so.

9               Q.   Now, do you also recall Ms. Read asking a  
10       series of questions regarding whether NewEnergy is  
11       required by law to replicate native load service?

12              A.   (Dr. O'Connor)   Yes.

13              Q.   Do you have contracts with retail  
14       customers that require you to replicate native load  
15       service?

16              A.   (Dr. O'Connor)   Contractually, yes.

17              Q.   You were also asked a series of questions  
18       regarding the phrase "ability to replicate native load  
19       service;" do you remember some of those questions?

20              A.   (Dr. O'Connor)   Yes.

21              Q.   And when you use that phrase "ability to  
22       replicate native load service," what do you mean by







1       Testimony of Phillip G. Breezeel"?

2               A.   Yes, I do.

3               Q.   Does that document consist of 15 pages of  
4       questions and answers in written form?

5               A.   Yes, it does.

6               Q.   Is IP Exhibit 1.1 the prepared direct  
7       testimony you wish to offer in this docket?

8               A.   Yes.

9               Q.   Do you have any correction or change to  
10      make to IP Exhibit 1.1?

11              A.   No.

12              Q.   If I were to ask you the questions shown  
13      on IP Exhibit 1.1 at this hearing, would you give the  
14      same answers as shown on that exhibit?

15              A.   Yes, I would.

16              Q.   You also have before you copies of  
17      exhibits that have been marked as IP Exhibits 1.2, 1.3  
18      Revised and 1.4?

19              A.   Yes, I do.

20              Q.   Were those exhibits prepared under your  
21      supervision and direction?

22              A.   Yes.

1           Q. Are those exhibits identified in your  
2 prepared direct testimony IP Exhibit 1.1?

3           A. Yes, they are.

4           Q. Do you have any corrections or changes to  
5 make to IP Exhibit 1.2, 1.3 Revised and 1.4?

6           A. No, I don't.

7           Q. Is the information set forth in Exhibits  
8 1.2, 1.3 Revised, and 1.4 true and correct to the best  
9 of your knowledge?

10          A. Yes, they are.

11          Q. Do you have before you a copy of a  
12 document that's been marked for identification as IP  
13 Exhibit 1.5 bearing the caption "Prepared Rebuttal  
14 Testimony of Phillip G. Breezeel?

15          A. Yes.

16          Q. Does that document consist of seven pages  
17 of questions and answers in written form?

18          A. Yes, it does.

19          Q. Is IP Exhibit 1.5 the prepared rebuttal  
20 testimony you wish to offer in this docket?

21          A. Yes, it is.

22          Q. Do you have any corrections or changes to

1 make to IP Exhibit 1.5?

2 A. No, I don't.

3 Q. If I were to ask you the questions shown  
4 on IP Exhibit 1.5 at this hearing, would you give the  
5 same answers as shown on that exhibit?

6 A. Yes, I would.

7 Q. Do you have before you a copy of a  
8 document that's been marked for identification as IP  
9 Exhibit 1.6 bearing the caption "Prepared Surrebuttal  
10 Testimony of Phillip G. Breezeel"?

11 A. Yes.

12 Q. Does that document consist of three pages  
13 of questions and answers in written form?

14 A. Yes.

15 Q. Is IP Exhibit 1.6 the prepared  
16 surrebuttal testimony you wish to offer in this  
17 docket?

18 A. Yes.

19 Q. Do you have any corrections or changes to  
20 make to IP Exhibit 1.6?

21 A. No.

22 Q. If I were to ask you the questions shown

1 on IP Exhibit 1.6 at this hearing, would you give the  
2 same answers as shown on that exhibit?

3 A. Yes, I would.

4 MR. LAKSHMANAN: We offer IP Exhibits 1.1,  
5 1.2, 1.3 Revised, 1.4, 1.5, and 1.6 into the record.

6 EXAMINER JONES: Any response?

7 MR. FITZHENRY: I have an objection to a  
8 portion of the rebuttal testimony. I will be making a  
9 motion to strike as appropriate. I don't know if  
10 there are any other objections to the other exhibits.

11 EXAMINER JONES: All right. You are going to  
12 object to a portion of --

13 MR. FITZHENRY: I believe it's 1.5.

14 EXAMINER JONES: Without getting into the  
15 reasons, why don't you identify that portion?

16 MR. FITZHENRY: Yes, sir, it's line 64  
17 through line 74 on IP Exhibit 1.5.

18 EXAMINER JONES: That's line 64 through 74?

19 MR. FITZHENRY: Correct.

20 EXAMINER JONES: Do any other parties have  
21 any objections to any of those exhibits? What's the  
22 basis of that objection?

1                   MR. FITZHENRY: Yes, sir. At lines 64  
2 through 74 of IP Exhibit 1.5 Mr. Breezeel purports to  
3 offer testimony as to the legislative intent  
4 surrounding the enactment of the Purchase Power  
5 Option. It's our opinion and our argument here today  
6 that testimony of that kind is absolutely barred by  
7 Illinois law. I am going to provide to you,  
8 Mr. Jones, a copy of the decision which is directly on  
9 point. And let me give the citation for the record.  
10 It's City of Bloomington versus Bloomington Township,  
11 233 Illinois Appellate 3rd. 724, 599-762. In this  
12 particular --

13                  EXAMINER JONES: All right. Just a minute. I  
14 will let you finish later. It looks like this is  
15 going to take awhile. And rather than hold everybody  
16 up on a motion to strike that's basically just been  
17 lodged -- and I am not quarreling with the timing -- I  
18 think we need to get a procedure in place here to  
19 address this as efficiently as we can. I think that  
20 procedure will be as follows. I think you have  
21 identified the portion of the testimony. You have  
22 given your reasons. You have some further argument to

1       make. IP will be responding.

2                       We are going to take cross examination  
3       today. If you want, if you choose not to cross  
4       examination on that portion, you do so at your own  
5       risk, depending on the outcome of the ruling. But if  
6       you prevail on the ruling, of course, then your not  
7       having crossed on that portion will not make any  
8       difference.

9                       If you want to cross on that portion of  
10       the testimony subject to the ruling, that's up to you.  
11       You are permitted to do that. But I don't think we  
12       want to take the time at 5:10 here on Tuesday evening  
13       to hear extensive argument on this motion. So after  
14       this witness is off the stand tonight, we will decide  
15       at that time what the appropriate procedure will be to  
16       get this properly addressed.

17                      MR. LAKSHMANAN: I appreciate that.

18                      MR. FITZHENRY: I have a question for  
19       clarification.

20                      EXAMINER JONES: Sure.

21                      MR. FITZHENRY: To the extent that I would  
22       cross-examine Mr. Breezeel on this point in his



1 testimony, I can't see nothing about the  
2 appropriateness of our legal arguments. I am not  
3 waiving my legal arguments that the motion to strike  
4 is proper by going forward with the cross examination;  
5 is that the procedure that we are following?

6 EXAMINER JONES: If you choose to cross  
7 examination on that portion of his testimony, you do  
8 not waive your legal arguments in support of your  
9 motion.

10 MR. FITZHENRY: Okay. Thank you.

11 EXAMINER JONES: All right. Let the record  
12 show that IP Exhibits 1.1, 1.2, 1.3 Revised, 1.4, and  
13 1.6 are admitted into evidence at this time. I will  
14 withhold the ruling on 1.5 until after the motion to  
15 strike has been argued.

16 (Whereupon IP Exhibits 1.1, 1.2,  
17 1.3 Revised, 1.4 and 1.6 were  
18 admitted into evidence.)

19 MR. LAKSHMANAN: The witness is tendered for  
20 cross examination.

21 EXAMINER JONES: It's my understanding there  
22 are at least a couple of parties who have questions,

1       one being IIEC and also NewEnergy. Who would like to  
2       lead off?

3               MR. FEIN: Actually, I don't believe  
4       NewEnergy has any more for Mr. Breezeel, so we will  
5       let Mr. Fitzhenry proceed.

6               EXAMINER JONES: All right, Mr. Fitzhenry, it  
7       looks like you are up.

8                       CROSS EXAMINATION

9               BY MR. FITZHENRY:

10              Q. Good afternoon or good evening. Let's  
11       stay with the portion of the rebuttal testimony that I  
12       just referred to a few minutes ago, Mr. Breezeel.  
13       Here, as I understand it, you -- am I pronouncing your  
14       name correctly by the way? Breezeel?

15              A. Breezeel, that's close.

16              Q. Here you seem to be offering the opinion  
17       that the intent behind -- the PPO was negotiated for  
18       the reasons as you state there on lines 64 through 74;  
19       is that right?

20              A. That's correct.

21              Q. And am I correct in understanding that  
22       you are not an attorney?

1 A. That is correct.

2 Q. And am I also correct in understanding  
3 that you have not studied law or taken courses at a  
4 law school with regard to statutory intent?

5 A. That's correct.

6 Q. Are you intending to offer a legal  
7 opinion at this portion of your testimony?

8 A. No.

9 Q. Now, here you refer to your recollection  
10 of, I take it, certain meetings that took place back  
11 in what, 1997?

12 A. That's correct, yes.

13 Q. How many meetings are you referring to  
14 here?

15 A. Several. I don't have a count.

16 Q. More than ten?

17 A. Probably.

18 Q. All dealing with this particular issue?

19 A. That being one of the issues discussed,  
20 yes.

21 Q. And at all these meetings where the  
22 purpose of the PPO was discussed were all nine

1 Illinois electric utility representatives present?

2 A. I doubt it.

3 Q. Do you recall that at all these meetings  
4 where the PPO was discussed that there were  
5 representatives of the Attorney General's office?

6 A. That I don't recall.

7 Q. The same question with respect to the  
8 City of Chicago?

9 A. That I don't recall.

10 Q. The same question with respect to the  
11 Citizens Utility Board?

12 A. I wouldn't say they were at all of them.  
13 CUB was certainly at many of them.

14 Q. So in these meetings where the PPO was  
15 discussed, it's your understanding that the parties  
16 that I have just identified, they did not have  
17 representatives at all those meetings, is that  
18 correct?

19 A. I don't recall that they had  
20 representatives at all of those meetings, yes.

21 Q. Now, the PPO is a service that's  
22 available or that either is or will be available to

1 all bundled customers in Illinois so long as they have  
2 a positive TC, according to IP?

3 MR. LAKSHMANAN: All bundled customers?

4 MR. FITZHENRY: In time, all customers when  
5 they become eligible for delivery services, they will  
6 be entitled to the Purchase Power Option so long as  
7 they have a positive transition charge.

8 MR. LAKSHMANAN: Just so I understand, when  
9 you say all, it doesn't include residential?

10 MR. FITZHENRY: It does not include  
11 residential. Let me restate the question.

12 Q. All non-residential customers that  
13 become eligible for delivery services who have a  
14 positive transition charge would be entitled to the  
15 Purchase Power Option?

16 A. That is my understanding.

17 Q. At these meetings were their  
18 representatives of the Illinois Commerce Commission  
19 Staff present?

20 A. Again, I don't recall if they were at all  
21 of them. I know they were at some of them.

22 Q. Again, still focusing on this same piece

1 of testimony, the intent or the purpose behind the  
2 PPO, as you understand it, is not reflected in the  
3 Customer Choice Law; is that correct?

4 A. I am not sure I understand the question.

5 Q. If I were to show you Section 16 -110 of  
6 the Customer Choice Law which outlines the provisions  
7 of the Purchase Power Option, would you find words in  
8 there to the effect that customers who did not want to  
9 participate in the true marketplace to potentially  
10 benefit from lower prices while maintaining the safety  
11 net of being served by their incumbent utility and to  
12 allow customers to have a proxy with customer choice,  
13 would you find those words in Section 16-110?

14 A. You would not find those words. However,  
15 because those words are not there, does not mean that  
16 wasn't the intent.

17 Q. We have already established that you are  
18 not an attorney; is that correct?

19 A. That is certainly correct.

20 Q. So this opinion here, is that the opinion  
21 of IP's legal counsel?

22 A. No, that is the opinion of me.

1 Q. As a lay person?

2 A. An involved, knowledgeable lay person,  
3 yes.

4 Q. After the law was passed, did you have  
5 the occasion to poll all the members of the General  
6 Assembly that voted in favor of the law?

7 A. No, I did not.

8 Q. Let's turn to page 4 of your rebuttal  
9 testimony, please.

10 A. Rebuttal testimony?

11 Q. Yes, we are still with your rebuttal  
12 testimony, Exhibit 1.5. There at lines 87 through 88  
13 you testify, "First, the PPO was never intended as the  
14 primary means of implementing choice in Illinois."  
15 And again I want to be sure that your expression of  
16 intent here is not one offered as a legal opinion,  
17 correct?

18 A. That is correct.

19 Q. And moving to the top of, still at page  
20 4, your response to Question Number 11, you offer that  
21 at the end of August 2000 IP only had one customer  
22 that was purchasing power and energy from a third

1 party and all the rest were taking service from the  
2 PPO?

3 A. That is correct.

4 Q. Am I correct in understanding that, under  
5 IP's PPO, customers do not pay an energy imbalance  
6 charge?

7 A. I believe that is correct.

8 Q. Are you familiar with the proceedings at  
9 the FERC involving IP and its filed retail energy  
10 imbalance service Docket Numbers ER99-4415-4530?

11 A. If you are asking if I am aware of it,  
12 yes. If you are asking if I know any of the details,  
13 no.

14 Q. What do you know about that filing?

15 A. That such a filing occurred.

16 Q. What is the filing that did take place?

17 A. Just what you said.

18 Q. That's the extent of your knowledge?

19 A. That's the extent of my knowledge, that  
20 such a filing occurred.

21 Q. If you don't know the answer to these  
22 questions, let me know. But do you understand that IP



1       was directed by the Commission in its delivery service  
2       tariff case last year to make such a filing at the  
3       FERC to file for a retail energy imbalance service?

4               A. No. I did not know that.

5               Q. Are you aware of any public criticism by  
6       the Commission this year with respect to IP's energy  
7       imbalance service?

8               A. Yes, I am aware of that.

9               Q. What is your understanding of those  
10      criticisms?

11              A. That we were criticized because the  
12      imbalance charges we were -- I don't remember if it  
13      was seeking to have them imposed or had imposed and  
14      were too high.

15              Q. It would be fair to say that the energy  
16      imbalance issue may have been a reason why customers  
17      did not go to alternative suppliers in IP's service  
18      territory to date, correct?

19              MR. LAKSHMANAN: Objection as to this witness  
20      has already stated that he doesn't even know much  
21      about the filing, much less he hasn't stated whether  
22      he agrees with the criticisms. He hasn't said whether

1       -- the foundation has not been laid as to this  
2       witness' knowledge on any of these issues.

3               MR. FITZHENRY: May I respond?

4               EXAMINER JONES: Yes.

5               MR. FITZHENRY: He has indicated a general  
6       awareness of the filing. He has indicated that he is  
7       aware of the Commission's criticisms with respect to  
8       the retail energy imbalance service that has been on  
9       file. And following up, I think a very logical  
10      question, does he believe that that issue has been a  
11      reason why there are not more customers taking service  
12      from alternative suppliers in Illinois.

13              EXAMINER JONES: I will make a ruling at this  
14      time. It's kind of a close call, but I think the  
15      question will be allowed provided that the witness is  
16      not required to give a yes or no answer and assuming  
17      that he knows. Do you need the question read back?

18              THE WITNESS: A. No, I do not know.

19

20              MR. FITZHENRY:

21              Q. Do you have an opinion as to whether or  
22      not a retail energy balance service is important to

1 retail customers in their decision as to whether or  
2 not they should take service from an alternative  
3 supplier?

4 A. No, I do not have an opinion.

5 Q. Do you know how many RESs are registere d  
6 in IP's service territory today?

7 A. I don't know the exact number.

8 Q. Do you have an approximate number?

9 A. Somewhere in the five range, five, six.

10 Q. Do you know approximately how many RESs  
11 are registered in the ComEd's service territory?

12 A. No, I do not.

13 Q. Do you know if it's more or less than the  
14 five?

15 A. No, I do not.

16 Q. Do you have an opinion as to whether or  
17 not the number of suppliers in IP's service territory  
18 may bear upon whether or not customers are more likely  
19 to take service from an alternative supplier as  
20 compared to the PPO?

21 A. Can you repeat the question?

22 Q. Sure, I will try to say it again. Do you

1       have an opinion as to whether or not the number of  
2       registered RESs in IP's service territory has any  
3       bearing on customers taking service from them as  
4       compared to the PPO?

5               A. I don't know that it has any bearing, no.  
6       I don't know that it doesn't either.

7               Q. Does it follow that the more suppliers  
8       there are, the more opportunities there are for  
9       customers to take service from them?

10              A. That would be a reasonable assumption.

11              Q. All right. I would like to take you back  
12       to your direct testimony. Page 4, lines 83-84, you  
13       indicate that the NFF process has not produced market  
14       values that are representative of the actual market.  
15       Do you see that testimony?

16              A. Yes, I do.

17              Q. Can you tell me what you mean by actual  
18       market?

19              A. The market that customers and utilities  
20       buy and sell electricity into and out of.

21              Q. What kind of products might be in this  
22       market?

1 A. A wide variety of products.

2 Q. Spot market purchases or spot purchases?

3 A. Yes.

4 Q. Long term transactions?

5 A. Yes.

6 Q. Short term transactions?

7 A. Yes.

8 Q. Now, on the next page of your testimony  
9 at lines 103 through 105 you suggest that the markets  
10 for Chicago are different than the markets downstate.  
11 Do you see that testimony?

12 A. Yes.

13 Q. Is it your testimony that the markets are  
14 different or that the prices for the products in those  
15 markets are different?

16 MR. LAKSHMANAN: I'm going to object. This  
17 was -- they had ample opportunities to discuss this  
18 with Mr. Peters and Mr. Jones. He's clearly only  
19 referring to them. To the extent that he can answer  
20 that particular question as what's written there is  
21 fine. But all he is doing is making a cross reference  
22 to other witnesses who were on the stand and could

1 easily have addressed this in more depth.

2 MR. FITZHENRY: Well, if that's true, then  
3 his testimony is not relevant and should be stricken.  
4 It's in his testimony. He is here to defend it.

5 EXAMINER JONES: It's in his testimony so I  
6 think counsel is entitled to ask. We will see what  
7 the witness has to say about that.

8 MR. FITZHENRY:

9 Q. Let me restate the question. I am not  
10 trying to be necessarily argumentative. Before I  
11 asked you a question about what you meant by market  
12 and you said it could be a whole host of products.  
13 The markets for Chicago and the markets downstate,  
14 would they contain the same types of products that you  
15 describe in my prior questions?

16 A. Yes.

17 Q. And so when you say the markets are  
18 different, if you know, is it the prices for the  
19 products that are different or is it that the products  
20 themselves are different from market to market or  
21 both?

22 A. It would be more the prices, I believe.

1           Q. And, again, similarly on page 6 of your  
2 direct testimony, Mr. Breezeel, lines 141-142, you  
3 state again the NFF value is not the true market  
4 value. And again so I'm clear about this, when you  
5 use the word "market" you mean it as we have talked  
6 about in these last series of questions, a market that  
7 has several different products?

8           A. Yes.

9           Q. Is that yes?

10          A. Yes.

11          Q. Thank you. Now let's go back to page 5  
12 of your direct testimony. One of your criticisms of  
13 the NFF processes is its use of stale data; correct?

14          A. That's correct.

15          Q. Now, as a preliminary matter can you tell  
16 me whether or not IP has entered into any transactions  
17 for 2001 since the time it provided the contract  
18 summaries for the NFF back in May?

19          A. I don't know.

20          Q. Did you at all assist in the putting  
21 together of the contract summaries for the NFF this  
22 past time?

1 A. Yes, I did.

2 Q. How many manhours were expended by you  
3 and your staff in that effort?

4 A. Several hundred.

5 Q. Does that include time spent in workshops  
6 and preparing for this proceeding?

7 A. This proceeding?

8 Q. Yes.

9 A. It would include attending the workshops  
10 related to Docket 00-0007, but not -- and time spent  
11 there, but not this current docket.

12 Q. Is it possible for you to quantify or  
13 even ballpark here today the amount of hours that  
14 maybe were expended in workshops in the docket to  
15 which you referenced from the total hours expended in  
16 preparing the contract summaries?

17 A. I'm not sure of what you are asking.

18 Q. If you spent hypothetically 500 hours  
19 putting together contract summaries, was, of that 500,  
20 200 spent in workshops?

21 A. It would be a relatively small percentage  
22 of the total hours.



1           Q. When you say several hundred, what do you  
2 mean by that? Two, three, four, five hundred?

3           A. I would guess probably in the four to  
4 five hundred range.

5           Q. How many people were involved in this  
6 process?

7           A. Six, that I can recall.

8           Q. So, roughly, two weeks worth of work for  
9 those six people?

10          A. If that's the way the number calculates  
11 out. But many -- most of those people were not full  
12 time all the time. You know, it was a few hours here,  
13 a few hours there.

14          Q. Let's go to page 7 of your -- I'm sorry,  
15 page 4 of your direct testimony. There on lines 85  
16 through 87 you state the NFF process was only intended  
17 to be an interim method until utilities implemented a  
18 market value index. Are you familiar with Section  
19 16-112 of the Customer Choice Law?

20          A. And the title is?

21          Q. I'm not sure of the title but that's  
22 where the provisions are for the NFF process and the

1 market value process.

2 A. Yes.

3 Q. Do you know whether or not the words  
4 "interim method" ever appeared in that statute?

5 A. Not off hand.

6 Q. You don't know either way?

7 A. I don't know either way.

8 MR. LAKSHMANAN: If you have got that  
9 section, show it to him. That's what we used before  
10 as a method of doing this.

11 MR. FITZHENRY: No, that's fine.

12 Q. Let's look at page 7 of your direct  
13 testimony, sir, and particularly lines 146 through  
14 148. And to summarize, you indicate that if the  
15 transition charge is too low, it would preclude some  
16 customers from taking the PPO for which they might  
17 otherwise be eligible if the TCs were placed in the  
18 proper market value. So my question is, it's your  
19 point, I believe, that if the market value is set  
20 correctly, that customers may be interested in PPO as  
21 well as taking service from an alternative supplier?

22 A. Yeah, that's a reasonable

1       characterization.

2               MR. FITZHENRY: Thank you. That's all the  
3       questions I have.

4               EXAMINER JONES: Do other parties have any  
5       cross for Mr. Breezeel? Have any redirect?

6               MR. LAKSHMANAN: If I could have just a  
7       minute, I don't believe so, but I would like to  
8       confirm that I have none. Five minutes.

9               EXAMINER JONES: Do you need five minutes?

10              MR. LAKSHMANAN: Yeah, it may take less than  
11       five.

12              EXAMINER JONES: All right. We will take a  
13       five minute recess for that purpose.

14                               (Whereupon the hearing was in  
15                               a brief recess.)

16              EXAMINER JONES: Back on the record. I  
17       understand there is no redirect, is that correct?

18              MR. LAKSHMANAN: No redirect.

19              EXAMINER JONES: Mr. Breezeel, I just have  
20       one question for you.

21

22

1 EXAMINATION

2 BY EXAMINER JONES:

3 Q. Could you refer to page 3 of your  
4 surrebuttal, please?

5 A. Okay.

6 Q. In this sentence which begins on line 61  
7 you state in part "We are willing to alter our  
8 hierarchy to use more bid offers if there is a strong  
9 showing of support for that." Do you see that  
10 testimony?

11 A. Yes, I do.

12 Q. And when you say you are willing to alter  
13 your hierarchy to use more bid offers, what are you  
14 referring to?

15 A. In the hierarchy of the data used in the  
16 calculation of the index there was in Mr. Jones' and  
17 Mr. Peters' testimony they give a listing of what data  
18 gets considered first and second and so on. There was  
19 testimony given by other parties in the case that they  
20 would like to see the bid offers given more weight and  
21 moved up on that hierarchy list. And Mr. Jones and  
22 Mr. Peters has said that's something that we would be

1 willing to do.

2 Q. So when you speak of a willingness to  
3 alter the hierarchy in certain circumstances, that's  
4 what you are talking about?

5 A. Yes.

6 Q. That's the alteration that would be  
7 involved?

8 A. Yes.

9 EXAMINER JONES: That's all I have. Any  
10 follow up?

11 MR. LAKSHMANAN: No.

12 EXAMINER JONES: All right. Thank you, sir.  
13 Off the record.

14 (Whereupon there was then had  
15 an off-the-record  
16 discussion.)

17 (Whereupon IP Exhibits 3.1  
18 through 3.7 were marked for  
19 purposes of identification as  
20 of this date.)

21 EXAMINER JONES: Back on the record. I think  
22 we are ready for the next IP witness. Please stand to

1 be sworn.

2 (Whereupon the Witness was duly  
3 sworn by Examiner Jones.)

4 J A C Q U E L I N E K. V O I L E S  
5 called as a Witness on behalf of Illinois Power  
6 Company, having been first duly sworn, was examined  
7 and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. LAKSHMANAN:

10 Q. Will you please state your name and  
11 business address.

12 A. My name is Jacqueline K. Voiles. My  
13 business address is 500 South 27th Street, Decatur,  
14 Illinois 62525.

15 Q. What is your position with Illinois Power  
16 Company?

17 A. My position is Manager of Delivery  
18 Services.

19 Q. Have you prepared certain testimony and  
20 exhibits to offer in this docket?

21 A. Yes, I have.

22 Q. Do you have before you a copy of a

1 document that's been marked for identification as IP  
2 Exhibit 3.1 bearing the caption "Prepared Direct  
3 Testimony of Jacqueline K. Voiles"?

4 A. Yes, I do.

5 Q. Does that document consist of nine pages  
6 of questions and answers in written form?

7 A. Yes.

8 Q. Is IP Exhibit 3.1 the prepared direct  
9 testimony you wish to offer in this docket?

10 A. Yes, it is.

11 Q. Do you have any corrections or changes to  
12 make to IP Exhibit 3.1?

13 A. Yes, I do.

14 Q. Could you please detail what those  
15 revisions are?

16 A. Yes. On page 4 of that exhibit on line  
17 68 after the word "annual" period, change the period  
18 to a comma and add "assuming no changes in any other  
19 factors included in the calculation of the TC, e.g.  
20 transmission rates, distribution rates, mitigation  
21 factors."

22 MR. FEIN: Do you think we could do that a

1       little slow so we can get that down? Unless you have  
2       a copy of the revised page.

3               MR. LAKSHMANAN: We have a couple of copies  
4       but we don't have the whole set so.

5               EXAMINER JONES: Sounds reasonable.

6               THE WITNESS: A. Okay, on line 68 after  
7       "annual" period, change the period to a comma and add  
8       "assuming no changes in any other factors included in  
9       the calculation of the TC, e.g. transmission rates,  
10      distribution rates, mitigation factors."

11              MR. FEIN: Thank you.

12              MR. LAKSHMANAN:

13              Q. Do you have any other revisions or  
14      corrections to make to IP Exhibit 3.1?

15              A. No, I don't.

16              Q. With the revisions you have provided, if  
17      I were to ask you the questions shown on IP Exhibit  
18      3.1 at this hearing, would you give the same answers  
19      as shown on that exhibit?

20              A. Yes, I would.

21              Q. Do you have before you a copy of exhibits  
22      that have been marked as IP Exhibits 3.2, 3.3, 3.4 and



1 3.5?

2 A. Yes, I do.

3 Q. Were those exhibits prepared under your  
4 supervision and direction?

5 A. Yes, they were.

6 Q. Are those exhibits identified in your  
7 prepared direct testimony IP Exhibit 3.1?

8 A. Yes, they are.

9 Q. Do you have any corrections or changes to  
10 make to IP Exhibits 3.2, 3.3, 3.4, 3.5?

11 A. No. However, I would like to point out  
12 that IP Exhibit 3.2 which is the Rider TC and IP  
13 Exhibit 3.3 which is Rider PPO have subsequently,  
14 since the time that I filed this testimony, had some  
15 changes to those particular riders, and we will  
16 incorporate those changes at the time of the  
17 conclusion of this case.

18 Q. Given that qualification, is the  
19 information set forth on Exhibits 3.2, 3.3, 3.4 and  
20 3.5 true and correct to the best of your knowledge?

21 A. Yes, they are.

22 Q. Do you have before you a document that's

1       been marked for identification as IP Exhibit 3.6  
2       bearing the caption "Prepared Rebuttal Testimony of  
3       Jacqueline K. Voiles"?

4               A.   Yes, I do.

5               Q.   Does that document consist of seven pages  
6       of questions and answers in written form?

7               A.   Yes, it does.

8               Q.   Is IP Exhibit 3.6 the prepared rebuttal  
9       testimony you wish to offer in this docket?

10              A.   Yes, it is.

11              Q.   Do you have any corrections or changes to  
12       make to IP Exhibit 3.6?

13              A.   Yes, I do.

14              Q.   Would you please describe those changes?

15              A.   On page 2, line 42, after the word  
16       "bills" insert "helps to" and change "insures" to  
17       "insure", so that it now should read "and their PPO  
18       bills help to insure that the savings a customer."

19              MR. FEIN:   That was an "E" ensure? I didn't  
20       understand the change to "insure."

21              THE WITNESS:   I took the "S" off of  
22       "insures."

1

2

MR. LAKSHMANAN:

3

Q. Do you have any other revisions to IP

4

Exhibit 3.6?

5

A. Yes. On page 5, line 104, change 2000

6

to 2001.

7

Q. Do you have any other revisions or

8

corrections to IP Exhibit 3.6?

9

A. Yes, I do. On that same page, on page 5,

10

line 99, change "calendar" to "billing cycle" so that

11

it reads "next billing cycle month."

12

EXAMINER JONES: What's that sentence begin

13

with? What words?

14

THE WITNESS: "Nonetheless."

15

EXAMINER JONES: I think the line numbers are

16

different than what was distributed.

17

THE WITNESS: Oh, I'm sorry, line, I thought

18

you meant sentence. That line begins with "next." It

19

says "next calendar month."

20

MR. FEIN: It's the last three words before

21

the heading Roman VI, Initial Implementation.

22

MR. LAKSHMANAN: If I may approach, I may be

1       able to point to it.

2               EXAMINER JONES:  No, that's all right.  You  
3       can continue.

4               MR. LAKSHMANAN:

5               Q.     Do you have any other revisions to IP  
6       Exhibit 3.6?

7               A.     No.

8               Q.     With those revisions inserted, if I were  
9       to ask you the questions shown on IP Exhibit 3.6 at  
10      this hearing, would you give the same answers as shown  
11      on that exhibit?

12              A.     Yes, I would.

13              Q.     Do you also have before you a copy of a  
14      document that's been marked for identification as IP  
15      Exhibit 3.7 bearing the caption of "Prepared Direct  
16      Surrebuttal Testimony of Jacqueline K. Voiles"?

17              A.     Yes, I do.

18              Q.     Does that document consist of four pages  
19      of questions and answers in written form?

20              A.     Yes.

21              Q.     Is IP Exhibit 3.7 the prepared  
22      surrebuttal testimony you wish to offer in this

1 docket?

2 A. Yes, it is.

3 Q. Do you have any changes or corrections to  
4 make to IP Exhibit 3.7?

5 A. Yes, I do.

6 Q. Could you please detail those revisions?

7 A. On page 2, line 38, after the word  
8 "bills" insert "helps to" and change the word  
9 "insures" to "insure."

10 Q. Do you have any other corrections to make  
11 to IP Exhibit 3.7?

12 A. No.

13 Q. With that revision inserted, if I were to  
14 ask you the questions shown on IP Exhibit 3.7 at this  
15 hearing, would you give the same answers as shown on  
16 that exhibit?

17 A. Yes, I would.

18 Q. Before offering the exhibits into the  
19 record and tendering the witness, I would like to have  
20 the witness answer a couple of questions with regard  
21 to an example that was provided by Mr. Robertson  
22 yesterday and which the witnesses Mr. Peters and

1 Mr. Jones deferred to Ms. Voiles in terms of whether  
2 it was an accurate example.

3 Ms. Voiles, were you present yesterday  
4 when Mr. Robertson provided an example in which he  
5 discussed a customer who had a meter read date of  
6 October 2?

7 A. Yes, I was.

8 Q. And at that time did he indicate that at  
9 least it was his belief that that customer would have  
10 only three business days in which to make a decision  
11 as to whether to go to choice or not? Subject to  
12 check, did he make the representation subject to check  
13 that that would be the number?

14 A. Yes.

15 Q. Is that number accurate?

16 A. No.

17 Q. What is the correct number of days that  
18 that customer would have?

19 A. The correct number of days that that  
20 customer would have in order to review his options  
21 would be eleven days. And that would not include the  
22 date of publication for the market values and the

1 customer TCs, and it doesn't include the day that a  
2 DASR must be submitted.

3 MR. LAKSHMANAN: Thank you very much. We  
4 offer IP Exhibits 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 and 3.7  
5 into the record.

6 EXAMINER JONES: Any response? Let the  
7 record show there are no objections. IP Exhibits 3.1,  
8 3.2, 3.3 through 3.7 inclusive, sponsored by  
9 Ms. Voiles, are admitted.

10 (Whereupon IP Exhibits 3.1  
11 through 3.7 were admitted  
12 into evidence.)

13 EXAMINER JONES: The changes that the witness  
14 identified, have they been made in the file and the  
15 copy that you have had marked?

16 MR. LAKSHMANAN: Yes, I believe they have.

17 Ms. Voiles is tendered for cross  
18 examination.

19 EXAMINER JONES: Off the record.

20 (Whereupon there was then had  
21 an off-the-record  
22 discussion.)





1 equivalent to or be less than ten business days; is  
2 that correct?

3 A. It depends.

4 Q. Would it be more than ten business days?

5 A. Well, I would have to look at a  
6 particular month where we may have some excessive  
7 holidays along with a weekend period.

8 Q. So in the hypothetical then that I gave,  
9 to the extent that it could take ten business days or  
10 more, isn't it possible that the customer would only  
11 have three days in which to decide to switch?

12 A. I actually looked at calendar year 2000  
13 and I looked at the first billing cycle of the month.  
14 And for the year 2000 one month had seven days for a  
15 customer to make a decision and that was the minimal  
16 amount of time for that particular decision window.  
17 All the other months had more days than seven.

18 Q. Did you look at 2001?

19 A. No, I didn't.

20 Q. And your proposal will be effective in  
21 2001, 2002, is that correct, if it's approved by the  
22 Commission?

1 A. That's correct.

2 Q. Now, when did the Company change its  
3 tariff? It was ten business days; was it not?

4 A. Yes, that became effective on June 15 of  
5 2000.

6 MR. ROBERTSON: Thank you. I have nothing  
7 further.

8 MR. FITZHENRY: But I do.

9 CROSS EXAMINATION

10 BY MR. FITZHENRY:

11 Q. The few questions I have remaining,  
12 Ms. Voiles, are directed to your rebuttal testimony.  
13 And, first, please refer to page 3 and the top of page  
14 4. You state that customers must submit a DASR no  
15 later than seven calendar days prior to the next  
16 scheduled meter read date; do you see that, you're  
17 rebuttal testimony?

18 A. Just one second. And what page again?

19 Q. Line 66, the bottom of page 3, the top of  
20 page 4.

21 A. Yes.

22 Q. Isn't it more correct to say that

1 customer self-managers can submit a DASR?

2 A. That's correct.

3 Q. And that RESs also will submit DASRs?

4 A. That's correct.

5 Q. And this provision would only apply to  
6 customers that are currently taking delivery services,  
7 correct?

8 A. No, it's not. Actually, we have a  
9 different requirement for customers who are delivery  
10 service customers only. We have an off-cycle switch  
11 that would apply in that particular instance.

12 Q. Are all customers eligible for off-cycle  
13 switch?

14 A. Currently they aren't.

15 Q. Looking to the next page at lines 77  
16 through 79, and there you make reference to the fact  
17 that the TC will be available in the eighth business  
18 day but suggest that customers and ARES follow the  
19 trends and be ready to make the decisions once the  
20 final values are published. I guess my question is,  
21 can you explain to us what you mean by follow the  
22 trends or what you mean by trends?

1           A. Well, they should be able to look at the  
2 market values that are being published at the same  
3 time that the TCs are being published. So from that  
4 standpoint, looking at the market values and if you  
5 are looking at it over more than one monthly period,  
6 you should be able to see a trend in those market  
7 values.

8           Q. Let me restate the question. Your  
9 statement about following the trends meant only  
10 following the change in the market values from month  
11 to month?

12          A. Yes, and they can also follow the change  
13 in their TCs from month to month because we are going  
14 to have their estimated TCs available for them.

15          Q. When you indicate that customers will  
16 know their transition charges by the eighth business  
17 day, they will know that by how? Going to the  
18 Company's web site?

19          A. Yes, that's correct, or if it's a group  
20 TC, we will have an informational filing at the  
21 Commerce Commission.

22          Q. Will the customer be able to call IP and

1 get that information over the phone?

2 A. Yes, they will be able to do that as  
3 well.

4 Q. Let me ask you to look at your testimony  
5 at lines 103 through 105 on page 5 of your rebuttal  
6 testimony. There you reference IIEC witness Stephens'  
7 statement in his testimony indicates that IP is  
8 currently considering an approach that would use the  
9 2001 market NFF values until the customer anniversary  
10 date. My question is, has IP come to a decision one  
11 way or the other with respect to that approach?

12 A. Yes, this is currently the approach that  
13 we have addressed.

14 Q. What is that approach?

15 A. The approach is that we will use the 2001  
16 NFF market values until the customer's anniversary  
17 date. The customer's anniversary date is the date at  
18 which they first became a delivery services customer.  
19 And at that time we will recalculate their TC based on  
20 the market values in effect for that particular time  
21 period.

22 Q. So let me be sure I understand how you

1       expect this to work. Let's assume that the  
2       Commission's order in this case becomes effective in  
3       February 2001 and the IP MVI is approved and it goes  
4       into effect in March of 2001. Let's assume that a  
5       customer has a TC established by the NFF in January or  
6       February of 2001 and is taking service PPO at that  
7       point in time. Are you saying that the anniversary  
8       date throughout the entire year that they are taking  
9       the PPO they would continue to be subject to the NFF  
10      market value?

11             A. When exactly did you say that they would  
12      be taking PPO?

13             Q. I said January 15, 2001.

14             A. And is that the date on which they went  
15      on to delivery services as well?

16             Q. Yes.

17             A. In that particular example, and I  
18      explained that in my testimony, is that we would use  
19      the 2001 NFF market values until January 1 of 2002 at  
20      which time we would use the market value index prices  
21      to recalculate that customer's TC on January 1. And  
22      then in that particular instance, January 15 is his

1 anniversary date. That particular instance it  
2 wouldn't be changed again on his anniversary date  
3 because we recalculated it January 1.

4 Now, if you would have used a February  
5 period, we would recalculate again on that particular  
6 customer's anniversary date. The reason that we are  
7 proposing that approach is because, if we were still  
8 using the NFF process January 1 of 2002, the customers  
9 would get their TCs recalculated using the new market  
10 values. So this is a transitional approach that we  
11 are proposing.

12 Q. A couple things about that. There were  
13 several answers in there, okay. In 2002, if there is  
14 still an NFF and the NFF produces a market value --  
15 strike that. I'm not sure I followed. If the  
16 customer's anniversary date is January 15 and IP's  
17 Rider MVI goes into effect, are you saying that come  
18 January 1, 2001, that that customer's transition  
19 charge would be recalculated based on IP's Rider MVI  
20 tariff?

21 A. Yes.

22 Q. For those 15 days?

1           A. In essence, it would be recalculated  
2 because his anniversary date was in January. That's  
3 why I tried to give you two examples. So we will  
4 stick with the first example of January 15. He will  
5 be subject to a recalculation for his anniversary date  
6 in January. It would be based off of the market  
7 values that were filed in December. And so from that  
8 particular example he would have a recalculation  
9 because of his anniversary date.

10           Q. And in that case the customer in that  
11 example we have been discussing would have a  
12 different, likely different, transition charge in  
13 January?

14           A. Yes.

15           Q. Now, in the event that transition charge  
16 went to zero, is it IP's position that at that point  
17 in time the customer would be terminated from PPO?

18           A. Our PPO termination is that it's  
19 effective with the next scheduled meter read date.

20           Q. So in this particular example, because  
21 the customer's anniversary is January 15, even though  
22 the TC went to zero, he would continue with PPO



1 service until the end of the month?

2 A. His scheduled meter read date, if that's  
3 January 15, that's when he would terminate the PPO  
4 regardless because of his contract termination or of  
5 his TC.

6 Q. What I am trying to get to without going  
7 through an example, in the event IP's Rider MVI goes  
8 into effect and as a result at some point in time the  
9 customer's transition charge is recalculated with that  
10 tariff, using that tariff, and as a consequence the  
11 customer's TC goes to zero, is it IP's position that  
12 the customer would no longer be entitled to PPO?

13 A. Yes. And that's no change from how we  
14 currently handle our PPO customers.

15 MR. FITZHENRY: Thank you. That's all the  
16 questions I have.

17 EXAMINER JONES: Mr. Fein?

18 CROSS EXAMINATION

19 BY MR. FEIN:

20 Q. Good afternoon, Ms. Voiles. Following up  
21 on a couple of questions of Mr. Fitzhenry's, this  
22 recalculation that you just described, when would that

1 customer be informed basically of the newly  
2 recalculated TC number?

3 A. In the example that Mr. Fitzhenry gave  
4 with the January --

5 Q. With the January 15 anniversary date?

6 A. He would know his new TC value on the  
7 eighth business day of December.

8 Q. Of December?

9 A. Yes.

10 Q. Now, if you could turn to page 4 of your  
11 rebuttal testimony, please, line 71, I had some  
12 questions regarding the days that are cited there.  
13 You reference a minimum of eight and a maximum of 16  
14 days to examine the market values and TCs; do you see  
15 that portion of your testimony?

16 A. Yes, I do.

17 Q. Are we talking here about calendar days  
18 or business days?

19 A. We are talking about calendar days.

20 Q. Now, one of the attachments to your  
21 direct testimony, the revisions to the Rider TC, I  
22 believe it's Exhibit 3.2?

1 A. Yes.

2 Q. The Company is now proposing basically a  
3 charge for a service of rescinding or revoking the PPO  
4 option after notice has been given?

5 A. That's correct.

6 Q. And your testimony references changes in  
7 the calculation of the fee. Do you see that reference  
8 in the narrative portion of your direct testimony,  
9 page 4, line 73 to 74?

10 A. Yes.

11 Q. And when you say a change in the  
12 calculation, are you referring to a change from one  
13 originally proposed or are you simply referring to a  
14 change in that you are providing this option basically  
15 for a fee?

16 A. This is a change from our currently  
17 effective Rider TC.

18 Q. In other words, that option is not  
19 available presently?

20 A. Well, there is an option but the pricing  
21 mechanism is different for that option in the current  
22 Rider TC as opposed to the language that we are

1       proposing.

2               Q. Right, thank you for that clarification.  
3       Now, on page 5 of your direct testimony you discuss  
4       some of the proposed revisions to Rider PPO. And on  
5       lines 97 and 98 you mention that these revisions are a  
6       change from your June 5 filing and were the result of  
7       discussions with other parties; do you see that  
8       reference?

9               A. Yes, I do.

10              Q. Are you able to tell us who those parties  
11       you are referring to? And I am not looking for you to  
12       divulge any confidential discussions that might have  
13       been had but trying to gauge who you are referring to  
14       there.

15              A. This was actually an oversight on  
16       Illinois Power's part. We received a data request  
17       from Staff, and as a result of the data request we  
18       noticed that we should have made changes to Rider PPO,  
19       and it was an oversight on our part. So that's what I  
20       am referring to, and as a result of that data request,  
21       conversations with staff.

22              Q. So when you use the phrase "discussions

1 with various parties," you are referring to the  
2 Commission Staff?

3 A. Yes, I was.

4 Q. And throughout your direct testimony you  
5 make a number of identical statements regarding  
6 discussions with various parties. Again, when you use  
7 that phrase in your testimony, are you referring to  
8 the Commission Staff?

9 A. I don't know. Can you point those out  
10 for me?

11 Q. Sure. On that same page, page 5, line  
12 110 at the bottom?

13 A. I believe that particular revision was  
14 more than just Staff on those particular discussions.

15 Q. And do you know who you are referring to  
16 there or are you able to tell us who you are referring  
17 to there?

18 A. Sure. I discussed this with the IIEC as  
19 well as Staff.

20 Q. And on the next page when you discuss  
21 revisions to SC 150, you refer to various parties  
22 again.

1                   MR. LAKSHMANAN: This is lines 119 and 120?  
2                   I just want to make sure because I think we each have  
3                   slightly different paginations.

4                   MR. FEIN: On my version it is line 119 and  
5                   120.

6                   THE WITNESS: A. Yes, my answer would be  
7                   consistent with my previous answer because this is the  
8                   same change as referenced above except it's a change  
9                   in a different tariff.

10                  MR. FEIN:

11                  Q. Regarding your revisions to Rider PPO  
12                  that you discuss on pages -- really, on page 5 of your  
13                  direct testimony, are you aware of whether my client  
14                  NewEnergy suggested any changes or raised any concerns  
15                  regarding your proposed revisions to Rider PPO?

16                  A. I'm not aware of any.

17                  Q. Do you know whether any of the revisions  
18                  that the Company proposed were actual concerns,  
19                  addressed any concerns or suggested changes that  
20                  NewEnergy made to Illinois Power?

21                  A. The proposed changes in my direct  
22                  testimony would not, to my knowledge.

1 Q. I'm sorry, I couldn't hear you.

2 A. The changes that I reference in my direct  
3 testimony to my knowledge would not have been the  
4 result of discussions with NewEnergy.

5 Q. At the top of page -- well, it says page  
6 8 of 9 on my copy. It's the very last paragraph to  
7 your answer to Question 15 beginning with the word  
8 "second."

9 MR. LAKSHMANAN: That would be line 155, I  
10 believe.

11 THE WITNESS: Yes.

12 MR. FEIN:

13 Q. These commitments that the Company made  
14 to the chairman of the Commission...

15 A. Yes.

16 Q. ..Is the Company still planning to meet  
17 those commitments?

18 A. Yes, we are.

19 Q. Is it your understanding that the  
20 existing schedule for this proceeding is going to  
21 allow the Company to permit implementation on January  
22 1, 2001, of its MVI?

1           A. That's not my understanding.

2           Q. Irrespective of that, is the Company  
3 still in its estimation at this point in time going to  
4 be able to make the commitments that it's referenced  
5 on lines 158 and 159?

6           A. Yes, we will be calculating all the  
7 commercial and industrial customers' TCs and make  
8 those available to the customers by December 1.

9           Q. Will the background documentation behind  
10 those calculations also be available to customers at  
11 that time?

12          A. I am not sure I understand what  
13 background information you are referring to.

14          Q. If a customer would like to see the  
15 Company's workpapers that derive the TCs, would that  
16 be something that's made available at that same time?

17          A. I know that this is an issue in the  
18 uniformity proceeding and that they are looking at  
19 what particular detail people are interested in. So  
20 I'm not sure that I can answer your question with a  
21 hundred percent certainty, because I'm not sure how  
22 much detail each customer may want to see.



1           Q. Okay. Then it would be fair, the  
2           commitment that we just referenced in your testimony  
3           at this point in time does not include the ability to  
4           obtain any background documentation behind the TC?

5           A. That's not necessarily true with the word  
6           "any." We would have the various components that made  
7           up that calculation at a summary level detail.

8           Q. And I guess -- the summary detail that  
9           you just described -- would it be the Company's  
10          position to provide any and all documents that it used  
11          to derive a TC if requested by a customer? I guess I  
12          don't understand the reference to summary documents.

13          MR. LAKSHMANAN: I believe that's not -- I  
14          will let the witness answer but I don't believe that's  
15          exactly what you said either. He mischaracterizes it.

16          MR. FEIN: I don't mean to mischaracterize  
17          it.

18          Q. Maybe if you could elaborate on what  
19          it is that you understand?

20          A. We would be able to provide them with the  
21          details, the particular details, that make up that  
22          calculation, the details such as what were the base

1 revenues, what were the delivery revenues, what were  
2 the mitigation factor, that type of detail. When you  
3 get into the specific interval metering data that may  
4 have gone into that calculation, that may be a  
5 different issue. So it depends on what level of  
6 detail that particular customer is looking for and  
7 whether we would be able to give them that detail in  
8 an understandable format. So it comes down to  
9 formatting, not the fact that the detail is not  
10 available.

11 Q. Just to clarify a question either Mr.  
12 Fitzhenry or Mr. Robertson asked, I believe you gave  
13 an answer that a minimum amount of time under the  
14 example that was given will be seven days, and I don't  
15 remember if it was clarified whether that was seven  
16 calendar or seven business days?

17 A. If you are referring to the minimum  
18 amount of time that a customer self-manager or an ARES  
19 or a RES must submit a DASR, it's seven calendar days  
20 and it's in our tariff.

21 Q. It wasn't the DASR process that I was  
22 referring to. It was, you gave the example of you

1 reviewed the calendar year 2000 to come up with your  
2 modification or lack of acceptance of the subject to  
3 check example from yesterday?

4 A. Yes.

5 Q. And if I recall your testimony correctly,  
6 it was you gave a minimum time period of seven days  
7 and that was only in one month, if I recall your  
8 testimony correctly?

9 A. That's correct. I looked at the year  
10 2000 and I looked at the date in which the market  
11 values would be published and also customers' TCs  
12 would be known on the eighth business day of the  
13 month. I looked at those at least in this instance  
14 the first billing cycle of the month because that  
15 would be the customers who would probably have the  
16 least amount of time to look at the information prior  
17 to being able to submit a DASR. And in that  
18 particular instance, not including the time that they  
19 have to submit the DASR, they had seven, and that's a  
20 minimum of seven, in one month. Every other month had  
21 more days than that for the customer to actually  
22 review the information. And those seven days did not

1 include the eighth day of the month when the  
2 information was published nor did it include the day  
3 that they had to submit a DASR.

4 Q. I think somewhere in there there probably  
5 was an answer. The question I think I asked -- all I  
6 was asking for was a clarification whether it was  
7 seven calendar days or business days.

8 A. It's actually seven calendar days.

9 Q. And, again, that was based upon your  
10 review of calendar year 2000, correct?

11 A. Yes.

12 Q. Taking into account the dates upon which  
13 market values would be available in calendar year  
14 2000?

15 A. Yes.

16 MR. FEIN: Thank you. Nothing further.

17 EXAMINER JONES: Do other parties have any  
18 cross examination for Ms. Voiles? All right. They do  
19 not. Is there any redirect?

20 MR. LAKSHMANAN: If I could have a couple  
21 minutes?

22 EXAMINER JONES: How much do you need?

1 MR. LAKSHMANAN: Five minutes?

2 (Whereupon the hearing was in a  
3 short recess.)

4 EXAMINER JONES: Back on the record. I think  
5 it's redirect time.

6 REDIRECT EXAMINATION

7 BY MR. LAKSHMANAN:

8 Q. Thank you. Ms. Voiles, do you recall a  
9 discussion with Mr. Robertson regarding a comparison  
10 of seven calendar days and ten business days?

11 A. Yes, I do.

12 Q. Would you like to clarify your comparison  
13 of those two sets of numbers?

14 A. Yes. Ten business days will always be  
15 greater than seven calendar days.

16 Q. Thank you. At the very end of the cross  
17 examination do you recall a discussion regarding the  
18 decision time for the year 2000 in which you perform  
19 an analysis?

20 A. Yes.

21 Q. When you performed that analysis, was it  
22 based on the dates that would have been applicable if

1       there had been an MVI in effect? Essentially, was  
2       this meant to be a hypothetical?

3               A. That's correct.

4               MR. LAKSHMANAN: Thank you. That's all we  
5       have.

6               EXAMINER JONES: Thank you. Any recross?  
7       There is none. Thank you, Ms. Voiles.

8               Let me note one thing quickly for the  
9       record. We have the NewEnergy Exhibit Number 3 with  
10      the revisions that were previously identified on the  
11      record. And the other NewEnergy exhibits, I believe  
12      those were one and two, NewEnergy still has in its  
13      possession, right, for purposes of attaching the  
14      necessary attachments to that?

15              MR. FEIN: Actually, the only NewEnergy  
16      exhibits that we need to provide the court reporter  
17      and the Examiner with are, I believe, is NewEnergy  
18      Exhibit 1, the direct testimony, which had omitted --  
19      the corrected direct testimony which omitted Doctor  
20      O'Connor's vitae.

21              EXAMINER JONES: I was thinking there might  
22      be some attachments to the rebuttal, too, and I think

1     you might have the court reporter -marked copy also.  
2     We don't need those right now. Just want to make sure  
3     we are clear on where they are. And I think that  
4     NewEnergy has in its possession those two and is given  
5     leave to withdraw those, so to speak, so as to make --  
6     add the necessary attachments that the other parties  
7     have. Again, you don't need to do it now.

8                     All right. Anything else this evening?

9                     MR. LAKSHMANAN: I just have a question on  
10     the pending motion to strike and what process, or do  
11     we prefer to take that up first thing in the morning,  
12     if that will be easier. I just want to make sure it  
13     wasn't forgotten since that piece of testimony,  
14     technically, none of it has come in yet.

15                    MR. FITZHENRY: It's just ten lines. I  
16     identified ten lines in his testimony.

17                    MR. LAKSHMANAN: I understood the original  
18     part of the documentation was, too.

19                    EXAMINER JONES: Maybe I can clarify that a  
20     little bit. The balance of that exhibit was not  
21     objected to and will be admitted at a minimum, with  
22     the objected-to portions still an open question. What

1 procedure do the parties suggest for addressing that?

2 MR. FITZHENRY: Maybe Mr. Lakshmanan and I  
3 can talk about it afterwards and report to you first  
4 thing in the morning. Or did you want to resolve it  
5 tonight?

6 EXAMINER JONES: I don't have to resolve it  
7 tonight, but for the convenience of the parties, if  
8 you want to suggest something right now, fine. But if  
9 you want to discuss what you think will work between  
10 now and tomorrow, that's fine, too. And we can see  
11 where we are at first thing in the morning. Not to  
12 say we will argue it then, given the fact we will have  
13 witnesses ready to go, but we can certainly revisit  
14 the question then and see what the two of you suggest  
15 we do in terms of resolving this.

16 MR. LAKSHMANAN: I think it may end up  
17 expediting rather than getting into a discussion now  
18 as to what will work and just dragging the proceedings  
19 on. So if that is helpful, if Mr. Fitzhenry and I can  
20 just discuss it --

21 EXAMINER JONES: No, that seems like a good  
22 idea, and don't hesitate to remind us in the morning.



1                   Anything else for this evening? All  
2     right. There is not. At this time then today's  
3     hearing is concluded and we are recessed until 9:30  
4     a.m.

5                                 (Whereupon the hearing in this  
6                                 matter was continued until  
7                                 October 4, 2000, at 9:30 a.m.  
8                                 in Springfield, Illinois.)

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1 STATE OF ILLINOIS )  
 )SS  
2 COUNTY OF SANGAMON)  
3 CASE NO.: 00-0259, 00-0395 & 00-0461 CONSOLIDATED  
4 TITLE: COMMONWEALTH EDISON COMPANY  
5 CENTRAL ILLINOIS PUBLIC SERVICE COMPANY  
6 UNION ELECTRIC COMPANY  
7 ILLINOIS POWER COMPANY  
8

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10 We, Carla J. Boehl and Cheryl A. Davis, do  
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13 that we reported in shorthand the evidence taken and  
14 proceedings had on the hearing on the above-entitled  
15 case on the 3rd day of October, 2000; that the  
16 foregoing pages are a true and correct transcript of  
17 my shorthand notes so taken as aforesaid and contain  
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19 other persons authorized by it to conduct the said  
20 hearing to be so stenographically reported.

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